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LYNCHING AND THE LAW

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LYNCHING AND THE LAW

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BY

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To

CHARLES TILFORD McCORMICK

PREFACE

A CHARACTERISTIC feature of the mounting volume of literature on lynching and mob violence has been the merely sketchy consideration it has given to the problem's legal aspects. Primary emphasis has been placed on the social, economic, and psychological factors involved in these offenses against organized society. The resulting generalized treatment of the legal factors involved is probably not commensurate with the importance and significance that they bear in relation to the problem as a whole. This belief, at any rate, has motivated several prominent social and educational agencies to coöperate in making the present study possible.

The Southern Commission on the Study of Lynching has given its active sponsorship and encouragement, and has itself paved the way for legal research by independently investigating a wide variety of lynching questions. The Commission on Interracial Coöperation has given the major part of the necessary financial aid. In addition, the Institute for Research in Social Science of the University of North Carolina supplied funds for some essential preliminary work and bore part of the expense of publication. The School of Law of the University of North Carolina espoused the projected study in its formative stages and correlated the efforts of the foregoing agencies.

The primary sources of data for this study consisted of the files of news clippings kept by Tuskegee Institute and the case studies of the Southern Commission on the Study of Lynching. Secondary sources were utilized in the Library of Congress, the Library of the University of North Carolina, and the Chicago Public Library.

This material was supplemented by responses received in answer to a questionnaire. Deans of nineteen Southern

Law Schools coöperated to make this branch of the inquiry successful. They compiled lists of addressees consisting of prominent judges, lawyers, and legislators in their respective states, signed the covering letters, and mailed the questionnaires. One thousand were sent out, and two hundred twenty-three responses were received.

Help and stimulation have been received from so many quarters that the author is at a loss to detail his particular expressions of gratitude. Suffice it to say that indebtedness to the many who are not mentioned is keenly felt and readily acknowledged. Charles T. McCormick and M. T. Van Hecke, successively Dean of the School of Law of the University of North Carolina, have been most helpful for their professional advice and guidance. George Fort Milton, indefatigable chairman of the Southern Commission on the Study of Lynching, has rendered the assistance that only so distinguished an editor and publicist could give. And Monroe N. Work of Tuskegee Institute has given his invaluable aid in the collection of source materials. To these in particular and to all others who assisted in any way the author wishes to express his sincere appreciation.

J. H. C.

Chapel Hill
February 1, 1933

INTRODUCTION

THREE YEARS ago, when the Southern Commission on the Study of Lynching undertook to identify and appraise the diverse factors involved in lynchings, it soon became apparent that the task of preventing these mob defiances to ordered society involved a two-fold problem.

From the long-scale standpoint, undoubtedly the major need was that of raising the general level of social behavior. Before this could be accomplished, however, there would have to be many years of bettered economic status, of improved educational opportunities, techniques and results, of more healthy, friendly relationship between the races. Any such program must look to the general upbuilding of the social structure, so that points of tension between white and black would be reduced, so that each race would take a saner, sounder attitude toward the other, and the general community life would be marked by economic stability and social contentment. All this will require generations of gradually refocussing points of view, of increased good will, of interracial respect.

Holding firmly that such a basic betterment is essential for fundamental and enduring solution, none the less the Commission felt that the immediate problem demanded equally careful attention. Was it not possible that, even with the existing tensions and irritations, even with the existing economic levels, the number of lynchings could be sharply reduced, and the punishment of those taking part in these reversions to the jungle could be made certain and severe. In a nutshell, the Commission asked, was it not possible that the processes of the law in dealing with lynchings could be quickened and given life.

In an effort to find the answers to this second group of questions, the Commission invited the School of Law of the University of North Carolina to coöperate in a survey of the actual legislation and administrative procedure in the American States, in regard to lynching. This task that

institution gladly undertook. Under the skilled supervision of Dean Charles T. McCormick, and of his successor, Dean M. T. Van Hecke, Mr. J. H. Chadbourn, of its staff, has devoted himself to the study. An Advisory Committee of Deans of Southern Law Schools has greatly aided the investigations. Mr. Chadbourn's work, of which the present volume is the fruit, has been intelligent, conscientious and unusually understanding.

Those interested in the realities of lynching and the law can examine this book with real profit. Its author has gone about his task in a realistic way. Casting aside outworn slogans, he has endeavored to find the facts and to assay the truth behind the facts. His analysis of the actual lynching statutes, and of their operation, or failure to operate, will impress those who are anxious for a veritable picture of the creakings of the machinery of the law.

One of the phases of the inquiry which seemed most useful was the drafting of suggested statutes which, if enacted, would put the legal machinery in such shape that it would have more chance to function effectively against lynchings. Let me draw special attention to the suggested statutes incorporated in this volume. Mr. Chadbourn, the law deans and the Southern Commission are united in the belief that many things can be done with our present legal machinery, to make effective both the prophylactic and punitive measures necessary immediately to reduce and eventually to extirpate lynchings from our society. Most of these can be done without offense to the reigning philosophy of our law. In final analysis, to be sure, the problem calls for intelligent zeal in the administration of justice, a real desire to preserve and defend liberty under law. Surely it is not too much to hope that reform to this end can be plainly charted and effectively carried out.

George Fort Milton, Chairman,
The Southern Commission on the Study of Lynching.

Chattanooga, Tenn.
November 2, 1932.

CONTENTS

		PAGE
	PREFACE	vii
	INTRODUCTION	ix
I.	LYNCHING AND THE ADMINISTRATION OF CRIMINAL JUSTICE	3
II.	JUDICIAL PUNISHMENT FOR LYNCHING	13
III.	ANTI-LYNCHING LEGISLATION	25
IV.	LYNCHING AS A STATUTORY CRIME	29
V.	MUNICIPAL LIABILITY	48
VI.	OUSTER OF PEACE OFFICERS	58
VII.	PROCEDURAL DEVICES	77
VIII.	MILITIA	85
IX.	CHANGE OF VENUE AND TRANSFER OF PRISONERS	92
X.	SPECIAL TERMS OF COURT	105
XI.	ATTEMPTED LEGISLATION	112
XII.	PROPOSALS FOR ADDITIONAL LEGISLATION	120
	APPENDIX A	134
	APPENDIX B	139
	APPENDIX C	149
	INDEX	215

LYNCHING AND THE LAW

CHAPTER I

LYNCHING AND THE ADMINISTRATION OF CRIMINAL JUSTICE

THE AMOUNT OF study given today to the problem of lynching is evidence that the public conscience has been awakened by the 3,753 lynchings between 1889 and 1932. Witness, for example, the reports of the Southern Commission on The Study of Lynching;[1] Walter White's penetrating book, *Rope and Faggot;*[2] and the brief, but cogent, comment of the Wickersham Commission.[3] The various aspects of the problem, however, are numerous; our factual knowledge is still fragmentary; and continued outbreaks show that the solution is still unfound.

What is the task of the law in connection with lynching? The scope of scientific legal research in this field depends, of course, on what we now know about lynching. An adequate recapitulation of available data is difficult but no less necessary.

Thanks to the pioneer record-keeping of *The Chicago Tribune,* begun in 1889, later taken up and amplified by Tuskegee Institute and the National Association for the Advancement of Colored People, certain elemental statistics are available. These are: number of occurrences, location, race and sex of the lynched person, inciting offense or event, and the manner of killing. From these figures many averages, totals, and ratios have been deduced, differing both in kind and importance. We have been shown

[1] The findings of the Commission were first published in a pamphlet entitled *Lynchings and What They Mean* (Atlanta, 1931). Arthur Raper's *The Tragedy of Lynching* (Chapel Hill, 1933) is a more detailed presentation of the results of the Commission's investigations.

[2] New York, 1929.

[3] Ira De A. Reid, "Notes on the Negro's Relation to Work and Law Observance," *U. S. National Commission on Law Observance and Enforcement,* Vol. I, No. 13, 221.

the proportion between the various offenses, manners of killing, men and women, Negroes and whites; the proportions of occurrences by sections of the country—South, North, East, and West; the proportions according to total and race populations by counties, states, and sections; and finally, the proportions according to months of the year and days of the week.

We have been carried beyond the laboratory of the statistician by the findings of the Southern Commission. The basis of its information is a series of painstaking case-studies of the lynchings in 1930, made by trained investigators working in the field. Common threads of economic and social factors have thus been found woven into the pattern of the typical 1930 lynching community.

It is a rural Southern county characterized in general by social and economic decadence. For example, it is below the state average in per capita tax valuation, bank deposits, income from farm and factory, income tax returns, and ownership of automobiles. Educational facilities are also below the state average. The church membership is seventy-five per cent Southern Baptist and Methodist. There is generally prevalent a supposed necessity for protecting white women against sex crimes by the Negro. All these, plus emotional and recreational starvation and a fear of economic domination by enterprising Negroes, create the complex of "keeping the nigger in his place." Periodic lynchings are the result.[4]

Now the foregoing cursory sketch (it does not do justice to the wealth of valuable information which has been collected concerning the lynching problem) is given to indicate the gaps in our present knowledge that can be filled only by legal investigation and study. It is fairly obvious that the first of these concerns the relationship between the character of the general enforcement of the criminal law and the practice of lynching. In a word, we should complete the portraiture of the typical lynching

[4] *Lynchings and What They Mean*, 31-32.

community by supplying its detailed record in the administration of criminal justice. Such an inquiry, while it is of transcendent importance, is too comprehensive for treatment in a single study. This will become more apparent as the present chapter proceeds. The bulk of this study will be closely delimited to the admittedly narrower topics of the effectiveness of the judicial process in lynching cases and the effectiveness of state anti-lynching legislation. Only passing attention will be given to the possibility of federal legislation and to interracial outrages other than lynchings, such as the recent Scottsboro case. With this preliminary confession of the modest pretensions of the present study, let us turn to the problem of lynching and the general administration of criminal justice.

Lynching is often interpreted as a protest against the inefficiency of courts as agencies for the punishment of crime. As far back as 1893, the Georgia Bar Association resolved that "the reason, or at least one great reason, why lynchings occur is because there is a distrust, and a constantly growing distrust, in the promptness and efficiency of the law."[5] In later years the same idea has been constantly reiterated, along with its obvious corollary that "the remedy for lynching is to restore the confidence of society in the just, prompt, and efficient trial and punishment of criminals."[6]

[5] Quoted in, Walter Clark, "The True Remedy for Lynch Law," *American Law Review*, Vol. XXVIII, 802.

[6] *Ibid.* See also Charles M. Bishop, "The Causes, Consequences, and Cure of Mob Violence," *Democracy in Earnest*, Washington, 1918, 191: "1. What seem to the layman as the unnecessary delays of the law have had large place in the public mind in more recent years as a justifying reason for the resort to mob law. 2. The effect of technical errors upon court decisions and the further delay and often complete miscarriage of justice thus occasioned have also been extremely irritating and have added to the weight of reasons which have swayed the judgment of the otherwise law abiding citizen. . . ."

P. L. Black, "Lynchings in Iowa," *Iowa Journal of History and Politics*, Vol. X, 162: "Finally it may be asserted with reasonable confidence that the effectiveness or ineffectiveness of the judicial system and the enforcement of law during any given period has indirectly affected the number of lynchings. . . ."

Letter from a prominent Texas attorney (1932): "As a matter of fact, so long as the present condition of stagnation or break-down in the proper administration of our laws continues, I am frank to say that in my opinion all the model statutes

These observations chart the beginning-point for a study of lynching and the law. Perhaps the most significant legal problem in lynching is the effect that the processes for the prosecution and punishment of crime, (apart, of course, from the crime of lynching), may have in provoking lynchings.

An examination of available data from this standpoint brings forth some significant facts. In some cases a person has been lynched during the course of, or after, the completion of legal proceedings against him. While of course no amount of judicial malpractice in such cases affords a valid excuse for lynching, such cases should be examined to determine whether it was present. If it was, then one of the probable incentives for lynchings can be identified and possibly corrected.

Not judicial error, but executive clemency, seems to have occasioned most of the lynchings which occurred during or after completion of the legal process. This was true in Georgia's *cause célèbre*—the case of Leo Frank.[7] Similar are the cases of Jim Durfee in Angleton, Texas, October 14, 1913, and of Spencer Evans, Crawfordsville, Georgia, March 23, 1918.[8] A stay of execution by the Supreme Court in Mississippi had the same effect in the

on lynching that can be passed will be unavailing and futile. So long as we continue to elect judges on their hand-shaking abilities rather than upon their knowledge of the law or their proficiency in the application thereof, and so long as the courts have little or no control over the trial as is the case in Texas, and so long as our statutes permit and encourage 'astute' criminal lawyers to defeat the ends of justice by the use of petti-fogging tactics, and so long as our courts wink at the use of perjured testimony, just so long will it be useless to try to discourage lynching. Our substantive laws are all right, for the most part, as they are; it is in the administration, or perhaps I should say the want of the proper administration, thereof that the trouble lies. Give our state courts the control over the trial that the federal courts have, and then make the judges appointive or give the bar the right to select them, and it is my view that you will accomplish more to discourage and prevent lynchings than you will by having any amount of lynching laws passed. What we need are able and fearless judges on the bench in place of mere moderators. . . ."

[7] "Mob Law in Georgia," *Literary Digest*, Vol. LI, 392; "A Georgia Investigation," *Harper's Weekly*, Vol. LXI, 335; "Georgia's Shame," *Independent*, Vol. LXXXIII, 280; "Why Was Frank Lynched?" *Outlook*, Vol. CX, 945.

[8] Records of Department of Research and Records, Tuskegee Institute.

case of Will Echols at Quitman, Mississippi, September 12, 1920,[9] and the same was true of the filing of a motion for an appeal in Norm Cadore's case in Louisiana, December 23, 1912.[10]

Three other cases probably indicate that the lynchers were dissatisfied with the effect of legal sentences. In July, 1915, Allen Green, 37-year old Negro, was convicted of "assault with intent to ravish" by the Court of General Sessions sitting in Walhalla, South Carolina. Sentenced to thirteen years imprisonment, he was paroled in 1918 by Governor R. A. Cooper. At the time of his release, Green was at work on the chain gang near Walhalla. On April 20, 1930, he is alleged to have assaulted a Mrs. Ramey. Three nights later, a mob of a hundred or more took him from the Oconee County jail, carried him to the spot where he had previously been working on the chain gang when released by Governor Cooper, tied him to a tree, and shot him to death. Nailed to the tree was this grimly facetious disapproval of the Governor's action:

> "On this spot Allen Green got his Parole
> and here he got his Lynch."[11]

The case of General Boyd in Walton County, Georgia, is doubtless unique. He was sentenced to two years for entering a white man's home and seizing a woman's foot. After serving twenty-three months he escaped, was recaptured and sent back for a year. A month after completing his time, he was lynched for the same offense for which he had served two sentences.[12] Perhaps, too, the fact that James Woodsome had attempted to assault a white woman, despite the fact that he had served a sentence for a similar crime against a Negro, led a Florida mob to lynch him on May 18, 1914.[13]

[9] *Atlanta Constitution*, November 24, 1920.
[10] *Philadelphia Press*, December 24, 1912.
[11] Raper, *The Tragedy of Lynching*, Chap. XIII.
[12] *Savannah Morning News*, November 27, 1913.
[13] See note 8 *supra*.

A protest against the way in which legal processes operated can perhaps be discerned in these cases. But who can say whether the pardons, the stay of execution, or the light sentences were improper?

In some cases, moreover, there is not even the suspicion of judicial malpractice. Cases are on record where lynchings have followed in the face of extreme sentences. In 1916 a Negro in Waco, Texas, killed a white woman. He was carried to Dallas for safekeeping. There an agreement was made between a part of the Waco community, the local authorities, and the Negro that he would be promptly tried, that he would waive his right to seek change of venue and to appeal, and that he would be protected from lynch law. On this agreement he was brought back. In a courtroom seating 500 there were 1500, with 2000 outside. As the jurors were called, members of the crowd yelled, "We don't need any jury!" After a hurried trial, the jury deliberated three minutes and returned a verdict of guilty. The defendant was sentenced to hang in a few hours. There was a pause of a full minute while the judge made the entry: "Jury verdict of guilty." Meanwhile the court stenographer, according to his later statement, slipped back of the sheriff and out of the room. The sheriff followed him. The silence was broken as a tall Waco citizen, driver of a brewery truck, yelled to the crowd, "Get the nigger!" A gruesome burning at the stake followed.[14]

The following lynchings are similar:

Kentucky—Jan. 15, 1911. Gene Marshall. Sentenced to death.[15]

North Dakota—Dec. 14, 1913. Oliver Culbertson. Sentenced to life imprisonment.[16]

Mississippi—Aug. 19, 1918. Unknown person. Same.[17]

[14] Roy Steelman, *A Study of Mob Action in the South,* 313 (manuscript in Library of University of North Carolina, 1929).

[15] See note 8 *supra.*

[16] *Montgomery* (Ala.) *Advertiser,* December 15, 1913.

[17] See note 8 *supra.*

Mississippi—Jan. 30, 1919. Sampson Smith. Same.[18]
Missouri—May 28, 1919. Jay Lynch. Same.[19]

There are cases in Tennessee[20] and North Carolina[21] where the lynched person was on trial or being taken to trial. And there is a West Virginia case where the lynched person was serving a life sentence.[22]

These sample cases, all for which pertinent information could be found, leave one in some doubt. It is fair to conclude that sometimes—as in the group of cases first examined—lynching is an expression of distrust in the efficacy of legal processes in the given case. But whether there was some ground for the distrust, in that the particular case was mishandled, an investigator is at a loss to say. Yet this expression of distrust is not an invariable condition in all lynchings. In the cases of the second group examined, the lynchers could have had no ground for dissatisfaction with the operation of orderly legal processes. In a word, in the case of a person who is lynched during or after trial, the evidence of a correlation between the judicial handling of his case and the lynching is contradictory and inconclusive. It can scarcely be said, therefore, that on the available evidence we can identify judicial inefficiency as a major factor in these lynchings.

In a probable majority of cases, however, there have been no judicial proceedings against the lynched person. It is conceivable, nevertheless, that the record of judicial punishment for crime in the community might have been so poor as to create a reasonable apprehension that justice would not be done by the courts in the instant case. Indeed, this seems to have been so in a Statesboro, Georgia, lynching in 1905 which Ray Stannard Baker investigated:

" . . . there existed a deep-seated conviction," he reported, "that justice too often miscarried in Bullock County and that murderers

[18] *Ibid.* [19] *Ibid.*
[20] Case of Dave Neal and Green Bowman, February 19, 1913, *ibid.*
[21] Case of John Jeffries, August 25, 1920, *ibid.*
[22] Case of William Bennett, Jr., July 25, 1920, *ibid.*

commonly escaped punishment through the delays and technicalities of the law. And there is, unfortunately, a foundation for this belief. In every lynching town I visited I made especial inquiry as to the prevalence of crime, particularly as to the degree of certainty of punishment for crime. In all of them property is safe; laws looking to the protection of goods and chattels are executed with a fair degree of precision; for we are a business worshipping people. But I was astounded by the extraordinary prevalence in all these lynching counties, North as well as South, of crimes of violence, especially homicide, accompanied in every case by a poor enforcement of the law. Bullock County, with barely 25,000 inhabitants, has had 32 homicides in a little more than five years—an annual average of 1 to every 4,500 people (The U. S. average is 1 to every 9,000). . . . . In twenty-eight years . . . only three have been legally hanged, notwithstanding the high homicide rate, while four have been lynched."[23]

Other data indicate that this case may not be typical. It has been estimated that for the period 1920-1926 South Carolina punished about six persons for every ten homicides, while Rhode Island punished only four for every ten.[24] Yet South Carolina had four lynchings during the same period in which the victims were accused of homicide or attempted homicide, two of rape and one of intimacy with a white woman. Rhode Island, on the other hand, has never had a lynching. Here the State with lynchings has a better record for the administration of criminal justice (in homicide cases, at least) than the non-lynching one. To be sure, the record for South Carolina as a whole might conceal significant variations in county records for punishment of homicide. Again Rhode Island's record might not be representative of that for the typical non-lynching state.

It should be remembered, moreover, that most victims of lynching are Negroes. The evidence is convincing that Negroes who are tried for serious crimes in lynching com-

[23] Ray Stannard Baker, "What is a Lynching? A Study of Mob Justice, South and North," *McClure's*, Vol. XXIV, 300.

[24] Brearley, *Homicide in the United States* (Chapel Hill, 1932), 122.

munities are more drastically punished than are whites similarly circumstanced. Professor Brearley estimates that in South Carolina for the period 1920-1926, 64.1 per cent of the Negroes charged with murder or manslaughter were found guilty, while the similar percentage for whites was 31.7. In regard to the severity of the punishment inflicted on Negroes, he says:

"Further evidence that the Negro is more severely punished than is the white person is presented by the 1910 census of prisoners. At this time Negroes constituted only 10.69 per cent of the total population of the United States but they received 56.0 per cent of the grave homicide sentences and 49.1 per cent of the lesser homicide sentences in the United States. In the South the Negroes provided 74.4 per cent of those sentenced for grave homicide during the year 1910 and 67.6 per cent of those committed for lesser homicides. During the same year the average sentence for those punished by imprisonment without fine and by definite sentences was 5.2 months for the whites and 17.4 months for the Negroes. This longer average sentence for the Negroes is probably due in part to their excess of punishments for homicide—such sentences usually being longer than for other offenses."[25]

Dr. Raper finds that data of more recent date point to the same conclusions:

"Data secured from the superintendents of state prison systems and wardens of penitentiaries of Southern States for the eighteen-month period ending July 1, 1931, demonstrate conclusively that Negro criminals brought before the courts are not dealt with leniently. In ten Southern States, of the eighty-one executions, thirteen were white—all convicted of murder—and sixty-eight were Negroes: fifty-seven murderers, eight rapists, and three burglars. During the same period, in twelve states, of 669 life sentences imposed, 199 were whites: 192 murderers, six rapists, and one burglar; of the 470 Negroes, 425 were convicted of murder, twenty of rape, and twenty-five of burglary and other offenses. For minor offenses, too, the sentences for Negroes were often greater than for whites."[26]

[25] *Ibid.*, 110. [26] *Op. cit.*, 35.

Obviously, these figures deal only with cases where the accused, white or black, has actually been punished. Because they do not include any consideration of the cases where the prosecution never reached that stage, these figures do not help on the question of whether more guilty Negroes than whites escape punishment altogether. The popular assumption answers this question in the negative.

The fragments of data examined in the foregoing pages show the difficulty in the way of making a definitive answer to the question proposed at the outset. The available evidence is, at the most, merely suggestive. For a more comprehensive answer, we must await the much needed undertaking of an extensive examination of the administration of criminal justice in the South.[27] Meanwhile it may prove profitable to study the judicial attempt to prosecute and punish the perpetrators of lynchings, and the legislative attempt to formulate effective anti-lynching measures.

[27] We have the product of some multiplied guesses on the question received in answer to our questionnaire. Two hundred and four answers have been received to this question:

> "Is it your observation or opinion that the administration of criminal justice in your state encourages lynching by failing in sure and swift punishment of the crimes which might incite it."

72 answered yes, and 106, no, while 26 gave qualified answers. But this is valuable only because the difference of opinion exhibited shows the need for a definitive answer, and as giving some basis for a speculation as to what that answer might turn out to be.

CHAPTER II

JUDICIAL PUNISHMENT FOR LYNCHING

Most of the discussion of the rôle of the courts in punishing for lynching has been characterized by phillipic or platitude. It is generally supposed that the machinery of justice stops whenever a lynching occurs, or, at least, that its operations become the merest sham and semblance. No one, however, has taken the trouble to adduce a quantitative measure of this alleged failure. Perhaps the want of this calculation presages the outcome of an attempt to make one.

Statistics on lynching are made up largely from newspaper information, with the clippings preserved for verification. A set of these clippings made daily and dating from 1900 to the present is available at Tuskegee Institute.[1] Here may be found the record of such action by the courts as has had sufficient news value to reach the daily press. Certainly it is safe to assume that any cases of conviction will have been reported. For conviction is news.

A careful study of the Tuskegee records has disclosed for the period 1900-1930 twelve instances in which a total of sixty-seven individual convictions were secured. The accompanying table (see page 14) sets forth some details of these convictions.

Only about eight-tenths of one per cent of the lynchings in the United States since 1900 have been followed by conviction of the lynchers. The percentages by the states which have any at all are as follows: Alabama, 4%; Georgia, .8%; Oklahoma, 3%; Virginia, 4%; Minnesota, 33%; Texas, .7%; Illinois, 7%; Missouri, 3%.

[1] There is a break in these records for the period 1903-09.

CONVICTIONS FOR LYNCHING[2]

State	*Date*	*Charge*	*Pleas*	*Number Convicted*	*Sentences*
Alabama.....	1900	Murder	Guilty	3	10 years to life
Alabama.....	1919	Complicity in murder	Guilty (28)		
			Not Guilty (2)	30	$100 to 15 years
Alabama.....	1920	?	Not Guilty	3	$100 and 3 months
Alabama.....	1920	Murder	Not Guilty	3	15 years to life
Georgia.....	1922	?	Not Guilty	3	1 to 4 years
Georgia.....	1926	Murder	Guilty (2)		
			Not Guilty (7)	9	4 years to life
Missouri.....	1903	?	?	?	10 years
Oklahoma.....	1922	Complicity in murder	?	7	Life
Virginia.....	1923	?	?	2	1 and 2 years
Minnesota.....	1920	Rioting	?	1	?
Texas.....	1920	Manslaughter	Guilty	3	2 years. *Suspended*
Illinois.....	1903	?	?	11	indeterminate

The first inclination in considering this low percentage of successful enforcement is to conclude that here is one of the worst failures, if not the worst, with which the law has been confronted. This conclusion is strengthened by comparing the relatively high percentage of forty-four for the punishment of homicide.[3] Further reflection, however, removes any cocksureness. We are dealing here with the perhaps rare instances in which there is a fair estimate of the number of actual commissions of the crimes in question. The beginning point is not a total of prosecutions begun to be contrasted with the number of successful prosecutions. This is the conventional brand of fragmentary criminal statistics. If the total occurrences of the other crimes were similarly known would the percentage of the law's success in punishing them be any higher than that for lynching? Perchance such data might show that failure to punish lynching has been unjustifiably selected as an unusually vulnerable weakness in the administration of law. The publicity attending each lynching may have

[2] In 1924 in Alabama a National Guardsman was convicted for murder in the lynching of Willie Baird, and sentenced to eighteen years. The judgment of the trial court, however, was reversed on appeal. Lancaster v. State, 106 Sou. 609, 617, 618 (Ala., 1925).

[3] Brearley, *Homicide in the United States*, 120.

caused this failure of criminal justice to be mistaken as unique, when, in fact, it may be typical of punishment for many other crimes. Denunciation should be preceded by the reflection that, while we know that legal processes have failed to punish for lynchings,[4] the degree of failure in comparison with the punishment for most other crimes is conjectural.[5]

Other limitations on these figures as a quantitative measurement of the efficacy of our legal machinery in dealing with lynching should be noticed. They indicate the breakdown of only one legal device which comes into play after a lynching has taken place, i.e. criminal punishment of lynchers, but criminal punishment of would-be lynchers is also important. The reported cases of this kind are analyzed in the following table. However, the total number of attempted lynchings is not known, and the percentage of success in punishing this crime cannot, therefore, be calculated.

CONVICTIONS FOR ATTEMPTED LYNCHING[6]

State	*Date*	*No. Convicted*	*Sentences*
Illinois	1925	1	$100 and 30 days
Georgia	1924	4	3 to 4 months
North Carolina	1921	1	4 years
North Carolina	1925	11	4 to 8 years
South Carolina	1914	2	?
Tennessee	1920	8	$ 50 and costs
Tennessee	1921	3	?
Virginia	1920	2	$ 25 and 10 days
Virginia	1921	1	$100 and 1 year

[4] Much sport has been made of the conventional coroner's verdict of "death at the hands of parties unknown." An interesting departure from this convention is the following case: A coroner's jury at Clarksville, Tennessee, returned a verdict of justifiable homicide when Negroes lynched a white youth for the rape of a Negress. *Richmond Evening Journal,* July 27, 1914.

It was reported in 1911 that "U. S. Judge George C. Holt has estimated that there are at least 300,000 of these murderers (lynchers) at large in this disgraced country." "The Shame of Pennsylvania," *Independent,* Vol. LXXI, 437.

[5] Brearley observes that the rate of punishment for homicide is higher than that for "burglaries, robberies, etc." *Op. cit.,* 138.

[6] This table includes only cases where mobs intent upon inflicting death have been frustrated and their members punished. Cases of flogging and other forms of injury are excluded, except where they involve an attempted lynching in the sense of an attempt to inflict death on the mob victim.

Moreover, future prevention through present punishment is not the only preventive device involved. Laws regulating the removal and guarding of prisoners, impressing posses, military protection, special terms of court to try inflammatory crimes—what of them? Figures on the probable lynchings prevented through the use of this arm of the judicial body are difficult, if not impossible, to obtain. True the press is often furnished by the compilers of lynching statistics with the "number of lynchings prevented" during a certain period. The implication of completeness in such bulletins is misleading, for the figures summarize only the instances reported in the newspapers during the period. It scarcely needs to be suggested that many instances have escaped journalistic notice because of the poor news value of the preventive employed. While there is a certain sensationalism about calling out the militia, reporters are quite apt to overlook the removal of a prisoner from one county to another or the impressing of extra guards to protect him.

How many times legal devices other than punishment for the crime of lynching have been utilized is equally important an index of the efficiency of the law as how many lynchings have been punished. Lack of facts leaves the picture only half painted. One cannot help but hazard that it is the more lurid half.

The clamor for better enforcement of the criminal laws to punish lynchers implies that punishment is an effective deterrent. Is this the fact? The following record of Alabama, which has a relatively large per cent of convictions, seems to demonstrate what common sense would foretell.

	No. of Lynchings year of conviction	*No. next year*	*Yearly average 6 years*	
Year			*Before*	*After*
1900	8	14	?	6.5
1919	7	7	3.5	2.2
1920	7	2	4.3	1
1924[7]	0	1	3.3	.33

[7] See note 2 *supra*.

A number of factors, however, might make this table a statistical illusion. Doubtless there is no single explanation, such as law enforcement which is a *causa sine qua non*, for any increase or decline of lynchings for a given period. Especially is it dangerous to assume that the causes inciting lynchings are constant and invariable for any space of time.

In this connection it should be noted in passing that even an unsuccessful prosecution is not without significance. Any of the preliminary trial stages may cause inconvenience and anxiety and may exert a proportionate deterrent influence. Indeed, Brearley finds that figures showing the relationship between homicide and punishment for murder and manslaughter in South Carolina for the period 1920-1926 suggest "the possibility that certainty of arrest and prosecution may be more of a deterrent from crime than a large percentage of convictions among the few who do not escape criminal proceedings."[8]

What stages of prosecution have been reached in lynching cases? Had they any effect in retarding subsequent threats of lynching? Even a partial answer would require detailed information that is not to be found. Furthermore, it should not be overlooked that even an unsuccessful grand jury investigation can have a desirable educational effect.

"One real hope of improvement," J. W. Johnson said in 1927, "lies in the slow process of education in public sentiment now going on in the South. . . . Educational advance is necessarily slow and must be assisted by every possible outside pressure. The effect of such pressure is shown in the case of Aiken, where it brought about a third grand jury investigation and although the grand jury failed to indict any of the men whose names were freely mentioned on the streets, yet the new Governor of South Carolina, newspapers, . . . as well as the Senate concurred in condemning this action by the grand jury. If the tangible results of the efforts to punish the Aiken lynchers were negative, the intangible results in the form

[8] *Op. cit.*, 125.

of assembling and uniting public opinion were distinctly positive. And it is on such intangible factors that hope largely rests."[9]

Naked figures on judicial punishment for lynching do not portray vividly enough this rôle of the courts. A few sample cases are offered, therefore, to make the portraiture more realistic.

Around the middle of April, 1930, a Negro, reputed to be the grandson of a prominent white man, was seized in the jail at Walhalla, South Carolina, tied to a tree and riddled with bullets. He had been accused of the rape of a white woman. Governor Richards sent special investigators at once, and a firm of local attorneys was engaged to assist the State. On May 17 seventeen men were indicted at a special term of court, charged as principals or accessories with murder and conspiracy to deprive of life, and assault upon the sheriff with intent to murder. The Mayor and the night policeman were among the seventeen. Additional indictments were subsequently returned against them for "malfeasance and soliciting crime."

The cases were postponed twice, once, it is reported, on the ground of "excessive heat."[10] Finally they came to trial on November third. All the defendants were acquitted, seven as a result of verdicts directed by the judge, ten as a result of jury findings.

The first link in the chain of evidence against the defendants was the fact that the car belonging to the night policeman of Westminster had been identified in the mob by its license plate. He admitted his presence and implicated others. Forty informative statements were sworn to and secured, including those from several persons who confessed their part in the lynching. At the trial, the sheriff and his son unequivocally identified two of the defendants as the leaders of the mob. Most of the witnesses for the prosecution, however, repudiated their former statements under the claim that they had been extorted through pres-

[9] "The Practice of Lynching," *Century*, Vol. CXV, 65.
[10] *New York Evening Post*, July 7, 1930.

sure. Furthermore, the court ruled out a number of inculpatory written statements made by the defendants themselves. One of these was that of a filling station operator admitting that he drove his own truck at the head of the procession and conveyed the Negro to the spot where he was killed. Observers at the trial report that the jury was composed of "good average citizens of the county," but that "attorney for the defense injected all the harrowing, inflammatory race prejudice into the case that was possible."[11]

Quite recently the ironic epilogue of this whole tragedy was enacted. The Greensboro (N. C.) *Daily News*, Oct. 15, 1932, carried the following editorial item:

"Confessing that he was one of the leaders of a mob that took a negro from jail in Oconee County, S. C., in April, 1930, and lynched him, Laudy Harris declares that he has a load off his conscience and is at peace with God. After the lynching Harris and a score of others were tried for killing the negro and acquitted. It may be all right, but you will notice that Harris endured the guilty conscience and took chances on peace with God until he was satisfied that the law couldn't get him. Having been acquitted by a friendly jury he can't be tried again."

This case has some bright aspects compared to others of which a partial record exists. Chief of these perhaps is the vigorous investigation that was made. A successful prosecution is sometimes thwarted at this essential stage. "Passing the buck" is an effective method. Following a lynching in Missouri in 1925 the Coroner was reported to have said, "There will be no inquest"; the County Attorney, "We feel that justice has been done—of course, the method was crude." The Chief of Police said that he knew members of the mob, but "it was up to the County Attorney."[12]

In two 1930 cases the grand jury investigations did not come until six months after the lynchings. In one of

[11] Raper, *The Tragedy of Lynching*, Chap. XIII.
[12] *New York Evening Post*, August 8, 1925.

these an investigator reports that "it (the grand jury hearing) doubtless would not have been instituted then except for the persistent demands of a few leading citizens."[13] In the other he reports: "The investigation . . . was disposed of as routine business and no one was surprised that no indictments were drawn. The investigation amounted to nothing more than an entry on the court records that a lynching had been investigated."[14]

Sometimes the Coroner's and the Grand Jury fail to call witnesses in possession of material facts. Raper reports as follows on this aspect of the 1930 case at Thomasville, Georgia:

"The coroner's jury examined only one witness, the county sheriff, though a number of leading citizens were present when Kirkland was taken. . . . For some reason the grand jury called only a few of the dozen witnesses suggested by a leading citizen who had ascertained the facts about the mob leaders. The foreman of the jury summoned the most prominent men on the list, but later reported that the jury was unable to determine whether the alleged mob leaders named by the witnesses were trying to lynch Kirkland or to help the sheriff protect him. In view of this, he said, the jury thought it needless to summon others."[15]

The following incident was reported by a Governor in whose state a lynching occurred in 1931:

"The Assistant Attorney General appeared before the grand jury investigation with the statement that he had information about several of the mob leaders. Upon hearing this report, one grand juryman said, 'Well, what shall we do with this witness?' After a profound silence, a second grand juryman suggested that the man be dismissed without testifying, and accordingly the Assistant Attorney General left the grand jury room and was not recalled."[16]

The continuance sometimes comes at the grand jury stage. In Georgia in 1930 the grand jury convened

[13] Raper, *op. cit.*, 129.
[14] *Ibid.*, 97.
[15] *Ibid.*, 241-2.
[16] Confidential correspondence in files of Commission on Interracial Coöperation.

within two weeks of the lynching. No indictments were returned, but the presentment said, "We heartily recommend and urge our next Grand Jury to continue zealously the investigation which we have begun." The "next grand jury" returned no indictments, but recommended that its successor, in turn, give serious consideration to the matter.[17] In Chickasha, Oklahoma, in 1930 twenty-three were indicted. The trial was first set for June 17. This was postponed until July 8. The reason for the delay by the county attorney was that other arrests were being contemplated and that it would facilitate matters to have all of the hearings at one time. On July 8 the local paper reported: "date for riot trial changed—will be held some time after July 21." This second postponement, for which no reason was given, was reported to have been agreed upon by the prosecution and defense counsel. No further steps were taken.[18]

Related to the continuance is the mistrial. In Alabama in 1923 there were three mistrials before a conviction was secured,[19] and this conviction was ultimately reversed after five appeals.[20]

The change of front by the state's witnesses is not without precedent. An Alabama case in 1922 is in point:

"The state abruptly closed its case this morning after one witness had been placed on the stand. Solicitor General Emmett Owens announced that the evidence adduced from some of the fourteen witnesses called by the state was 'the most changed evidence he had ever seen.' "[21]

Reluctance to testify is exhibited in other ways, however, than a change of front. In Union, South Carolina, in 1930, the sheriff testified before the Coroner's Jury "I almost had my hands on the 'nigger' but never succeeded

[17] Raper, *op. cit.*, Chap. XVIII.
[18] *Ibid.*
[19] *Montgomery Advertiser*, October 30, 1923.
[20] Lancaster v. State, 106 Sou. 609, 617, 618 (Ala., 1925).
[21] *Atlanta Constitution*, September 13, 1922.

in getting hold of him." When news came to Governor Richards that the sheriff, although in the mob for sometime presumably trying to gain possession of the prisoner, could not identify any member of the mob, Governor Richards declared that the sheriff's conduct was reprehensible, and sent investigators from his office. No court action was taken.[22] Again the material witnesses may be intimidated. This was true of the 1930 case at Bryan, Texas. A local attorney made the statement that there were Negroes who, he knew confidentially, had incriminating evidence which would lead to trials and probably conviction of the men who killed Roan, but that they would not give it before the courts for fear of reprisal.[23]

Sometimes an apologetic note is detected in the charge of the judge to the grand jury:

"It is my duty to ask that you investigate the recent lynching in our town and make a report of your findings touching the same. It is not within my province to direct the kind or character of investigation you shall make. All I am duty-bound to say and require is investigate, find, and report in accordance with the action you have taken. I am sure you will do this without other suggestions on the part of the court and I am sure nobody will criticize you for performing a sworn duty. . . . You and I did not make these laws, but we are sworn to uphold and enforce them."[24]

The evidence in the Walhalla case was strong and unconflicting in favor of the state. This is not always true. For example, note the press story of a case in Mississippi in 1926:

"One of the defendants was put to trial. He and three others had been indicted. When the case got before the jury the sheriff swore that he identified the defendant as one of those who grabbed and were conveying the Negro away. The State produced no other eye witness. The sheriff's deputies in their evidence were

[22] Raper, *op. cit.*, Chap. XIV.
[23] *Ibid.*, Chap. VIII.
[24] "The Lynching at Cartersville—A Case Study," Files of the Commission on Interracial Coöperation.

not positive. Even Colonel Ward did not add to the material and necessary strength of the case. Then came some other swearing as to what the sheriff had said to other people. Then came alibis good and plenty. Then a cyclone of oratory on one side collided with a tornado of oratory on the other side. The jury was out almost 24 hours. . . . Under the evidence that got before the jury . . . we do not see how the jury could have done otherwise."[25]

The irresistible interpretation of the foregoing sporadic figures and illustrations is that a pro-lynching sentiment is expressing itself in manifold ways in the judicial process—in part by stifling investigation, stultifying rulings of the court on motions and evidence, sentimentalizing jury and witnesses. It would seem that no structural inadequacy of existing judicial agencies for the punishment of crime accounts for the record. Our traditional forms of procedure probably need no fundamental change. The problem is to meet the elusive human factor in a system of good laws administered by fallible men. Surely this factor cannot be legislated out of existence. Nor can it be obscured by the idealistic description of the system as a government of laws and not of men. An anti-lynching sentiment will, when the millennium arrives, make the sequel to the present record a converse expression of the desires of men expressed in the administration of their laws.

Does this sentiment express itself in any typical ways? Are any links in the chain of law enforcement more amenable to its expression than others? Adequate records of enough cases do not exist to make possible a synthesis of common flaws. Inductively, therefore, we can find very little from reported cases. Common opinion, however, as reflected in answers received in response to our questionnaire is that the breakdown occurs in the following ways, listed in the order of the frequency of occurrence:

[25] *Commercial Appeal*, January 15, 1926.

1. Refusal of persons with first-hand knowledge to testify.
2. Trial jury verdict actuated by local prejudice in lieu of consideration of evidence.
3. Failure of the grand jury to make adequate investigation.
4. Failure of the prosecuting officer to investigate and furnish the grand jury with evidence.
5. Nolle prosequi by prosecuting officer.
6. Adverse trial court rulings on motions and evidence.
7. Reversal by appellate court on non-prejudicial error.

Are there any devices available for minimizing and blocking the channels through which this pro-lynching sentiment can express itself in the judicial system? Some legislatures have attempted an answer to this question.

CHAPTER III

ANTI-LYNCHING LEGISLATION

The response of the legislatures to the crusade against lynching has been much heartier than that of the courts. The numerous and divergent statutes on the subject offer, therefore, a more fruitful field for study than does the meager action by the courts. The first step is, obviously, to classify and describe this body of legislation, note something of its history, and then to study in detail its significance.

Anti-lynching legislation is broadly of two types. It is punitive or prophylactic, seeking on the one hand to punish when a lynching has occurred—on the other, to anticipate and prevent lynchings. If, however, the philosophy underlying punishment is prevention rather than retribution, then the division is pragmatic only. At least it is convenient to make it for purposes of discussion.[1]

The main types of punishment in anti-lynching legislation are: (a) punishing lynchers by making lynching and mob violence statutory crimes; (b) fining counties and cities in which lynchings and mob violence occur; (c) removing delinquent peace officers. Other and more sporadic ones are: penalties for (1) failing to respond to an officer's summons for aid in protecting a threatened person; (2) violating safety zone established by officers; (3) failure on the part of the proper officer to prosecute lynchers; (4) refusing to testify in a lynching investigation; (5) publishing a printed or moving picture portray-

[1] Only that legislation which *expressly* deals with lynching or mob violence is included in this treatment. Of course, other legislation may be inarticulately designed to deal with the problem. This, for example, may be true of Mississippi Code (1930) Sec. 3674 giving the Attorney General the right to perform the duties of the local District Attorney. But no way is perceived to discover what legislation has been passed with this implicit purpose in view.

ing a lynching; (6) failing to call special term of court.[2] Often special procedures are set up to facilitate the infliction of these penalties, such as: prosecution on information in lieu of indictment, prosecution by the State's Attorney General, and provisions for offering rewards and hiring detectives.

The most familiar types of legislation designed to prevent lynchings by anticipating them are provisions for: (a) employing military force to guard a threatened person; (b) changing the venue of his trial; (c) calling a special term of court to try him, and (d) removing him to the jail of an adjoining county.

The majority of this anti-lynching legislation has been enacted during the past decade and a half. Much of it has been sponsored by Negroes. This is true of the Ohio law, which was introduced by Representative H. T. Eubanks.[3] The Minnesota law is reported to have been engineered by a Negro clubwoman, Mrs. W. T. Francis of St. Paul, who persuaded Representative Theodore Christianson (white) to introduce it.[4] H. J. Capehart, the colored member of the House of Delegates, is reported to have drawn and sponsored West Virginia's law. To win his own party to it he reduced the county forfeiture from $25,000 to $5,000. The bill was fought by a Democratic minority.[5] The Pennsylvania law was drafted by Representative Andrew Stevens (Negro). All the House Democrats are reported to have supported it. The single negative vote was a Republican one.[6] The first use of this law was by the wife of a Klansman killed in a riot resulting from a Ku Klux Klan parade. The press reported that Stevens was "tricked by fate."[7] The New Jersey law is reported to have been passed at the behest of Negroes.

[2] For convenience all of the statutes referred to herein are collected in the Appendix, *post*, p. 149. This obviates the necessity for repeated citations.

[3] *New York Age*, June 28, 1910.

[4] *Chicago Defender*, March 19, 1921.

[5] *New York Age*, April 30, 1921.

[6] *Saint Louis Argus*, April 27, 1923.

[7] *Pittsburgh Courier*, November 3, 1923.

"While the Republicans claim credit for the bill's introduction and passage, it was approved by a Democratic Governor."[8] A committee of colored citizens is credited with the Kentucky law.[9] A Negro Representative introduced the Nebraska law.[10]

Quite often this legislation represents the sublimation of a militant anti-lynching sentiment aroused by a recent lynching which has shocked the local conscience. The *Columbia* (S. C.) *Record*, June 29, 1931, states: "Lynchings at Marion, Ind., last year caused the Indiana Legislature to write a drastic anti-lynching law which Governor Leslie has signed."[11] So also the lynching of Montgomery Godley at Pittsburg, Kansas, on Christmas day of 1902, seems to have prompted the enactment of the Kansas law in 1903.[12] And doubtless some of the statutes enacted in the past decade are the answer of proponents of state's rights and local self-government to the post-war agitation for a federal law to curb lynching. The press, for example, so considered the Virginia law.[13]

Anti-lynching legislation has been repealed in at least two states. Alabama passed an act in 1868 penalizing counties in which mob-murders took place.[14] A special session of the Texas Legislature in 1897 created the crime of "murder by mob violence" and provided for the removal of peace officers delinquent in protecting prisoners taken from their custody and killed.[15] The exact dates of repeal and the reasons actuating it have not been dis-

[8] *Philadelphia Times*, July 2, 1923.

[9] *Houston Informer*, April 11, 1920.

[10] *Savannah Tribune*, February 12, 1927.

[11] See to the same effect *Princeton* (Ind.) *Democrat*, August 4, 1931.

[12] J. E. Cutler, *Lynch-Law* (New York, 1905), 245.

[13] See *Literary Digest*, Vol. XCVI, 14. The *Chicago Defender* of August 19, 1922, states: "The *Macon* (Ga.) *Telegraph* declared that there was no way under heaven to keep the (Dyer) Anti-Lynching bill from being chocked down the throats of Georgia lynchers, if the law did not step out and seek to punish the perpetrators of the 'city's reign of terror.'" The laws in Nebraska and New Mexico were passed with emergency clauses.

[14] See the following: Gunter v. Dale County, 44 Ala. 639 (1870); Dale County v. Gunter, 46 Ala. 118 (1871); DeKalb County v. Smith, 47 Ala. 407 (1872).

[15] See Alexander v. State, 40 Tex. Cr. R. 395, 50 S. W. 716 (1899).

covered. The date of the Alabama Act, however, suggests that the stigma of reconstruction was probably stamped upon it.

Our discussion of this legislation should be primarily from what may be called the functional point of view. A critical appraisal should be attempted on the basis of an analysis of the administration and enforcement of these statutes. In a word, the empiric test should be applied. In many instances, however, there will be no record of enforcement. Then we may take what may be called the doctrinal point of view. This will consist of subjecting the theories and concepts embodied in these statutes to cases which have arisen. Conclusions reached in this manner will be grounded on hypotheses, but, in the nature of the case, they will be the only kind possible. From either point of view the ultimate purpose will be to make specific suggestions for modifications and additions. There is still another consideration which might be made—a comparison between the common and statute law. But if our main emphasis is empirical, it would not seem to be of any moment whether any given statute is declaratory of or additional to the common law.

CHAPTER IV

LYNCHING AS A STATUTORY CRIME

LYNCHING and mob violence under the common law have no technical signification. To the legal mind the terms connote a hodge podge of numerous crimes—riot, rout, unlawful assembly, murder, assault and battery, *et cetera.*

"Lynching has no technical legal meaning. It is merely a descriptive phrase used to signify the lawless acts of persons who violate established law at the time they commit the acts. . . . The offense of lynching is unknown to the common law."[1]

Statutes, however, have made lynching a crime, *sui generis,* in six states—Alabama, Indiana, Kansas, Kentucky, Virginia and North Carolina.[2] The same is true of mob violence in four states—Illinois, Pennsylvania, New Jersey, and West Virginia. Four states have provisions for accessorial liability—Alabama, Indiana, Kansas, and Kentucky. Kentucky provides penalties for attempted lynching. Where death is a part of the statutory offense the maximum punishments are life imprisonment or death. Where injury only is necessary, the maximum penalties vary from five to fifteen years.

Seven of the ten states having statutory definitions of the crime of lynching or mob violence have had lynchings since the respective enactments: Alabama, 3; Illinois, 8; Kansas, 4; Kentucky, 6; North Carolina, 36; Virginia, 1; West Virginia, 1. In Alabama the perpetrators of one of the outbreaks were punished. All of the others went unpunished. No evidence exists, however, to show that any defects in the respective statutes account for the failure to convict. Nor is it conceivable that this could be so.

[1] *Corpus Juris,* Vol. XXXVIII, 328.

[2] Georgia makes lynching a statutory crime, but without defining it.

Statutes creating and defining the crime of lynching and mob violence would be of little functional importance if their only effect were to supply new names for punishing the familiar conduct patterns known as murder, assault and battery, riot, rout and unlawful assembly. If the sole purpose were punishment of the active and passive malefactors, such statutes would merely supply a new phraseology for the indictment. Neither sureness of punishment nor its severity would be promoted. Even with such statutes there would seem to be nothing to prevent the prosecuting officer from drawing the indictment for any of the other crimes involved in the mob action. This point is noted in many of the responses elicited by the questionnaire.

1932. Letter from South Carolina Attorney: "Generally speaking I believe we make a mistake in treating it (lynching) as a separate crime from murder. Personally, I believe that the common law sufficiently covers the whole subject and that it is entirely unnecessary to have any legislation on the subject. Public opinion will not allow a conviction of the members of a mob for murder or manslaughter. The same public opinion would prevent the conviction of the members of a mob for any specific crime that may be designated by statute. I believe the evil is being gradually eradicated as education becomes more universal."

1932. Letter from Kentucky Attorney: "I do not believe that passing any further laws will make conviction any easier nor provide any greater deterrent than is now provided. I have long ago reached the conclusion that if one law, ample in its provisions, will not work, then two laws of the same character will also fail."

1932. Letter from Arkansas Attorney: "No penalties could be devised more severe than the present penalties for murder. Lynching is simply murder. When one is put to death unlawfully by a mob, the reason that those responsible for it go unwhipped of justice is to be found in our system of enforcing criminal laws."

But these statutory definitions do not operate solely in the sphere of punishing lynchers. They give a rhetorical

unity to the whole body of the law which in any way deals with lynching.[3] Counties are fined, peace officers removed, witnesses punished for refusing to testify. A lynching or mob outbreak must have occurred to invoke the infliction of these and other types of punishment. The statutory definition will determine the presence or absence of this necessary condition. In fact, in three states the terms "lynching" or "mob violence" are defined solely for this purpose. No new crime is created and no punishment provided. They are Minnesota, Nebraska and Ohio. Judged by their controlling effect on the enforcement of all laws dealing with lynching these statutory definitions are not mere surplusage. By the same token, a critical consideration of their varying concepts is not purely academic.

What, then, constitutes a lynching under the statutory law? With the exception of Kentucky, North Carolina and Ohio, it is the killing of any person by a mob. In Ohio it is an act of violence by a mob. In Kentucky it is the killing by a mob of a person in the custody of peace officers. In North Carolina it is conspiring to enter jail for the purpose of killing a prisoner or actually so entering.[4] All ten of the states but Minnesota and North Carolina give a definition of mob, but, as noted, New Jersey, Illinois, Pennsylvania and West Virginia give none of lynching.

Analysis shows that the divergencies in legislative conceptions of a mob concern the minimum number of persons necessary, and their purpose and intent in assembling together. The former ranges from one in Alabama, Indiana and Kansas, and three in Kentucky, to five in Illinois, New Jersey and West Virginia. Nebraska, Ohio and Vir-

[3] Courts, however, may decline to take this logical point of view. For example, the Kansas court has refused to apply a definition of "mob" in a 1903 statute in an action under an 1858 statute, which, while penalizing cities for mob violence therein, failed to define "mob." See *post*, p. 39.

[4] See State v. Lewis, 142 N. C. 626, 55 S. E. 600 (1906), interpreting this statute.

ginia provide only for a "collection" of persons. The following kinds of purpose and intent are requisite in one or more of the statutes.

1. Any unlawful purpose with intent to injure anybody violently and without lawful authority. (Alabama, Indiana, Kansas. Also one alternative in Nebraska).
2. The purpose of doing violence or injury to any one in custody of peace officers. (Kentucky).
3. An unlawful purpose and without authority pretending to exercise correctional (or regulative in Illinois) power over any persons by violence. (Nebraska and Ohio. Also an alternative in Illinois).
4. Intent to commit assault and battery on anybody. (Virginia).
5. Purpose of offering violence to the person or property of any one (New Jersey and West Virginia).
6. Purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law. (Illinois).

Most of these statutes contain too many technical refinements in attempting to define the requisite purpose and intent necessary to constitute a mob. Three cases illustrate the opportunity thereby opened up for vain and scholastic verbal quibbles. In *Davis v. Board of Commissioners of Mahoning County*,[5] the suit was against Mahoning County by an administratrix to recover under the provision of Ohio statute creating liability on counties in which lynchings occur. The facts are stated in the opinion as follows:

"The record discloses that in the evening of said 7th day of January, 1916, a collection of people had assembled in Broad Street of said village of East Youngstown and were rioting by looting and burning buildings and discharging fire arms promiscuously; there was also rioting and lawlessness in other parts of said village, which continued at intervals throughout the night. At about midnight an armed party of some fifteen persons approached Broad Street

[5] Oh. App. 30 (1917).

from a westerly direction and they were also discharging fire arms somewhat promiscuously. . . . It was about this time that the decedent, Davis, was walking along said railroad tracks adjacent said Broad Street. Three persons . . . were likewise walking along said tracks, and about ten feet behind Davis, when he suddenly fell to the ground, and when they approached and raised him up, he said that he was shot. The record does not disclose . . . that at the time the wound was received the said mob had any particular person or persons in view, or as the object of their lawlessness."

The court denies a recovery to the plaintiff on the ground that the intent defined in the statute is not shown.

"Said act, though liberal in its terms, was never intended to provide compensation for the indiscriminate, lawless, predatory acts of a riotous mob, generally, but not definitely, on mischief bent, but to provide a remedy for damages suffered from definite, specific acts. . . . "

The same technicality, requisite intent of a mob, was raised in *Barnes v. City of Chicago*.[6] The mother of a policeman, killed when trying to disperse a mob, sued the city of Chicago. Defendant demurred and contended "that the declaration is defective in that it does not allege that the mob assembled for the unlawful purpose of offering violence, etc. to said Simpson 'supposed to have been guilty' etc., or 'for the purpose of exercising correctional powers or regulative powers over said Simpson by violence.' " This argument led the trial court to sustain the demurrer. In reversing the case, the appellate court cannot answer this argument, but finds an ambiguity in another section of the act under which it can allow the plaintiff a cause of action. The court's distaste for the technical requirement of the special intent necessary to constitute a mob as laid down in the statute is clear:

"The result of lynching is no less serious to the community, or persons affected, whether the mob expends its violence on a par-

[6] 225 Ill. App. 31 (1922). On further appeal this case was reversed. See *post*, p. 42.

ticular party against whom it purposes vengeance, or some innocent bystander. The instances are not few where mobs have taken into their hands the punishment of one who was unquestionably guilty of the crime which provoked the assemblage. But, can it be said that the dependent of such criminal is more entitled to consideration and compensation so far as the act is remedial in its nature, than a dependent of an innocent party or that the purpose of the act, the suppression of mob violence, will be conserved in one case and not in the other?"

In *Board of Commissioners of Champaign County v. Church*,[7] a similar type of action, there was some evidence that the group of persons which perpetrated a killing assembled originally out of motives of curiosity. The defendant County persuaded the trial court to give the jury the following charge:

"The jury is charged as a matter of law that, although you may find and believe, from the evidence before you in this case, that said Charles W. Mitchell, referred to in the petition, suffered death at the hands of a collection of individuals in Champaign County, Ohio, on or about the 4th day of June, 1897, if you further find from the evidence that said collection of individuals did not for any unlawful purpose, and did not intend to do damage or injury to anyone, and did not intend to exercise correctional power over other persons by violence, and without authority of law, at the time of assembling, but was or were attracted and induced through motives of curiosity, and the events that had transpired around the courthouse yard and jail during the night and morning preceding, to meet and assemble together, and, being thus assembled, without any unlawful purpose, and not intending to do damage or injury to anyone or pretending to exercise correctional power over any other person or persons by violence and without authority of law, afterwards committed the acts of violence resulting in the death of said Charles W. Mitchell, then the plaintiff in this case cannot recover and your verdict should be for the defendant."

[7] 62 Oh. S. 318, 57 N. E. 50 (1900).

Although this charge was disapproved on appeal, it is not without significance that the trial judge, at least, could be persuaded to follow literally the precise terms of the statute.[8]

Five hundred men capture an alleged rapist in the mountains of Kentucky or North Carolina, hang him, and riddle him with bullets. This is no lynching. The rapist must have been arrested and have been in the custody of a peace officer in Kentucky and must have been actually jailed in North Carolina. The most liberal judge could not hold otherwise under the clear wording which imposes these limitations in the Kentucky and North Carolina Statutes. Twenty-five out of twenty-six of Kentucky's fifty-nine mob murders between 1900 and 1932 were, it is true, of persons in custody. It does not seem the part of wisdom, however, to assume that this history will repeat itself. Data are available on nineteen of the thirty-five mob murders in North Carolina for the period 1900 to 1932. Only eight of these were cases involving the removal of the deceased from a jail.[9] It seems clear that this technicality is ill-advised. The majority of persons answering the questionnaire are in accord with this conclusion. Two hundred and twenty-two answers were received to this question:

Some statutes provide that to constitute a lynching, the person killed must be in the custody of peace officers. Is this a desirable limitation?

[8] On the other hand, there are two Kansas cases which apply the definition of number one *supra* quite liberally:

Harvey v. Bonnie Springs, 102 Kan. 9, 169 Pac. 563 (1917). Plaintiff's husband killed by armed posse seeking to arrest him without a warrant. *Held*, evidence justified finding of a mob and consequent recovery against city of $8500.

Moon v. City of Wichita, 106 Kan. 636, 189 Pac. 372 (1920). Four police officers broke in plaintiff's house, declined to show a warrant, assaulted plaintiff, and damaged his property. *Held*, evidence justified finding of a mob and consequent recovery against city.

[9] Compiled from news clippings on file at Tuskegee Institute.

Twenty-one answered yes; 197, no; while 4 gave qualified answers. Seven answered from Kentucky; six of them disapproved of the custody limitation.

Available figures show, furthermore, that in general the proportion of lynched persons taken from custody to those never arrested is, for roughly one-half of the lynchings, approximately two to one. This affords a reasonable assumption that the proportion for the other half of the lynchings on which data does not exist would be about the same.

LYNCHINGS FROM 1900-1930[10]

No. Lynchings	*No. Classified*	*No. Custody*	*Custody*
1,894	823	273	550

The fact is that, in view of the social consequences which should be engendered by them, these statutory definitions are, for the most part, too elaborately detailed. Broadly stated, the aim of a statutory definition is to aid in preventing mob violence. This it does by describing the the circumstances under which certain legal devices—punishment of lynchers, fining counties, ousting peace officers, etc.—may be invoked. This it does also by describing what threatened circumstances should invoke prophylactic measures—militia, special terms of court, change of venue, etc. It scarcely needs to be suggested that a non-technical, simple definition is for the purpose in view the best type.

These virtues the Minnesota definition embodies:

"Lynching is the killing of a human being by the act or procurement of a mob."

By its rigid simplicity such a definition makes irrelevant considerations raised by the others—intent of the mob, requisite number of persons, the purpose for which the violence was inflicted, and the status of the person on whom it was inflicted. If the main purpose in view is to deal with mob violence, the operation of the legal remedy should not be conditional on any of these minor aspects of

[10] Compiled from news clippings on file at Tuskegee Institute.

the mob violence. A mob killing for vengeance has just as vicious social consequences as a mob killing for regulative or correctional purposes.

For the same reason it is deemed unwise to lay down a minimum of persons necessary to constitute a mob. The results of the questionnaire support this conclusion. One hundred and ninety-one answered this question:

Should a numerical minimum of persons necessary to constitute a mob be included (in a statutory definition of lynching). If so, what number?

81 answered yes; 102, no; and 8 were undecided. The numbers suggested in the affirmative answers were—1, 2, 3, 4, 5, 6, 10, 15, 20, 25 and 50.

Although the definition suggested reduces the elemental constituents of lynching to a minimum, it still leaves a wide opening for judicial construction. It makes no effort to define what is meant by a mob. When is a killing murder as not executed by a mob? When is it lynching as executed by a mob? When is a person a member of a mob?[11] These fundamental questions are left open for judicial construction on the facts and circumstances of each case. Perhaps the greatest difficulty will come in distinguishing lynching and what is commonly known as affray or, in the vernacular, a free-for-all-fight. If six slight men attempt violence on one husky one and kill him as a result, the situation is scarcely one justifying a fine on a county or a removal of the sheriff. By way of contrast, a somewhat similar case at Thorndale, Texas, was treated by the press as a lynching, and it would seem properly so. On June 25, 1911, six men seized a Mexican boy age 14, weight less than 50 pounds, from officers and killed him.[12]

At Honey Grove, Texas, in 1930, a Negro accused of murder was killed by a deputized posse while resisting arrest. A mob of a thousand persons was standing by.

[11] The Nebraska and Ohio statutes say that "a person present with hostile intent" is a member of the mob.

[12] Files of Department of Records, Tuskegee Institute.

When the Negro was killed they seized his corpse, dragged it, face down, for miles, and then burned it in front of a Negro church. The Southern Commission says that the facts "probably justify its classification as a lynching."[13] But none of the requirements of any of the detailed statutes is probably met. The situation, it could be strongly argued, showed that the collection of people did not assemble for any of the requisite purposes or with the required intent. Under the non-detailed Minnesota statute, however, the occurrence could be logically designated a lynching. There are no technical requirements to constitute a mob and lynching is alternatively killing by the procurement of a mob. The only showing necessary would seem to be that the collection of persons stimulated a killing rather than an arrest by the posse.

Fact situations present varying hues that cannot well be anticipated and blended into fixed details. The good faith of judges must be relied on to prompt them to declare a situation to be that sort of social phenomenon which calls for the extraordinary legal remedies provided.

Moreover, we do not proceed wholly in the dark in suggesting that the courts be allowed to determine on the facts of each case whether a mob is present, unshackled by any detailed legislative concepts. This has been done in a long line of Kansas cases.

In his message to the Territorial Legislature of 1858, J. W. Denver, Secretary and Acting Governor, called attention to organized bands "whose members are bound by most solemn oaths and obligations to resist the laws, take the lives of their fellow citizens, or commit any other act of violence" and to the consequent necessity imposed upon him for using United States troops to keep the peace.[14] In response to his request the Legislature passed the following law:

[13] *Lynchings and What They Mean* (Atlanta, 1930), 67.

[14] See Koska v. Kansas City, 123 Kan. 362, 255 Pac. 57 (1927).

"All incorporated cities and towns shall be liable for all damages that may occur in consequence of the action of mobs within their corporate limits, whether such damages shall be destruction of property or injury to life or limb."[15]

The first reported case under the statute is one in 1872, in which Eliza Ann Johnson recovered $450 from the city of Atchison, because her husband "being then in full life, of good bodily health, and of sound mind, and while keeping and conducting himself in an orderly and quiet manner, was, by a crowd of men, consisting of about fifty persons, and constituting a mob, in an unlawful and brutal manner, wrongfully, and with great force and violence, without any legal cause or justification therefor, seized upon, and by said mob, with a rope fastened around his neck, dragged over the ground a distance of more than five hundred yards and then and there killed by being strangled, choked, and hung by the neck until he was dead."[16] The next reported case of a recovery is that of Wade Adams, who recovered two dollars from the City of Salina in 1897 for the lynching of his son within the city limits.[17]

Then in 1903 the Kansas Mob Violence Act was passed embodying the definition of "mob" given above. But in many actions against cities that arose thereafter, the courts did not consider this definition as applicable, and those that did so consider it are criticized by one of the latest deliverances of the Kansas Court on this question.[18] Therefore, we have a series of actions against Kansas cities in which the court has determined without any restrictive legislative definition whether or not a mob existed. The first of these is in 1909, but a slightly earlier case, an action against mobsters themselves, strikes the liberal note for later cases against the cities. Plaintiff sued certain mob

[15] Laws 1858, chapter 25.
[16] City of Atchison v. Twine, 9 Kan. 350 (1872).
[17] Adams v. City of Salina, 58 Kan. 246, 48 Pac. 918 (1897).
[18] Koska v. Kansas City, 123 Kan. 362, 255 Pac. 57 (1927).

members for injuries inflicted by them. A judgment for the defendants was reversed.

"If, however, the allegation under consideration be treated as a material one (mob character of defendants), which it was incumbent upon the plaintiff to prove, the judgment must be reversed on account of the terms in which the court defined the word 'mob.' The definition adopted presumably originated in Rapalje's Law Dictionary, for it differs widely from that of any other law writer or lexicographer, and is given there unaccompanied by any citation of authority. Its defects are obvious. While 'an assemblage of a number of people acting in a tumultous and riotous manner, calculated to put good citizens to fear and to endanger their person and property,' would doubtless constitute a mob, it can hardly be seriously contended that all the elements named must be present to have that effect. . . . There is no basis in reason or authority for holding that a riotous assemblage can only be a mob when it is calculated to endanger both person and property, or that the matter might be affected by the character of the citizenship of the persons placed in fear or in danger."[19]

The other cases, as noted, are suits against cities. The facts and holdings are outlined below:

1909. City of Cherryvale v. Hawman, 80 Kan. 70, 101 Pac. 994. "Shortly after a marriage had taken place in the city of Cherryvale, a number of men gathered at the house where the bride and groom were staying, placed them in a wagon, and drew them by hand up and down the streets, making proclamation of their nuptials and introducing them to passers-by in burlesque speeches, attracting a large crowd and occasioning some disorder and tumult." Plaintiff was run over by the wagon. Judgment for plaintiff affirmed.

1914. Blakeman v. City of Wichita, 93 Kan. 444, 144 Pac. 816. Plaintiff became involved in a street fight with a number of boys with the result that he and a number of others were jailed. About thirty prisoners formed a "Kangaroo Court," tried plaintiff, and flogged him. Judgment for plaintiff affirmed. "The circumstances that the persons did not voluntarily come into the

[19] Stevens v. Sheriff, 71 Kan. 434, 80 Pac. 936 (1905).

jail and did not originally assemble there to whip the plaintiff does not put them outside the definition of a mob. The manner of their coming together or the primary purpose for which they assembled is not material if, they, in fact, formed the unlawful purpose and became riotous after they were brought together."

1921. Wilkins v. City of Mineral, 109 Kan. 46, 197 Pac. 863. Plaintiff, a clergyman, incurred the ill-will of one Burt by his zealous advocacy of liquor law enforcement. Burt assaulted and battered plaintiff in the presence of onlookers who cried, "Kill him! Knock his head off!" *Held*, a mob.

1922. Sanger v. Kansas City, 111 Kan. 262, 206 Pac. 891. Plaintiff on returning from bank with $1,637, was met by an armed man who demanded the money. Another was at the wheel of a car with motor running, and a third seated therein covering plaintiff with a pistol. Plaintiff surrendered the money. *Held*, no mob.

1925. Berberick v. City of Topeka, 119 Kan. 552, 240 Pac. 968. Injury by a "Kangaroo Court" as in Blakeman case *supra*, but recovery denied, because a state officer—sheriff—in this case had custody.[20]

1927. Hendren v. Arkansas City, 122 Kan. 361, 252 Pac. 218. "Plaintiff, an admitted simpleton, resides in Arkansas City. For some time prior to the doings involved herein he indulged in the fancy that he had histrionic attainments of such high order that some imaginary motion picture companies were competing for his services, and that one of them planned to waylay and kidnap him. This delusion quite naturally attracted the attention of several young men and boys of the town, and on the evening of May 8, 1925, some 30 or 35 of them escorted him to one of the city parks on the pretense of hunting these imaginary kidnappers." *Held*, a mob so that plaintiff recovered against city for injuries inflicted in the horse-play.

1930. Seigler v. City of Kansas City, 131 Kan. 504, 292 Pac. 937. Plaintiff drove a car with the following sign on it: "Buy an Essex and worry with me. I bought this Essex from David-

[20] This case runs counter to clear expressions in earlier ones to the effect that the inability of the city to prevent the mob violence should be no defense for the defendant city. City of Atchison v. Twine, 9 Kan. 350 (1872).

son Brothers, Kansas City, Kansas, and I am sorry now." He placed it in Davidson's Garage for repairs. Employees of the latter attempted to remove the sign; plaintiff resisted; and "seven men then in the garage struck, kicked, and beat the plaintiff, knocked him down several times, and severely injured him." *Held*, a mob.

No fears from allowing the courts absolute freedom in the definition of the word mob are generated by this judicial record in Kansas. Perhaps it is enough to off-set the effect of a discouraging Illinois case. In *Barnes v. City of Chicago*,[21] as noted previously, a mother sues for the death of her son, who, as a policeman, was shot by the mob he was attempting to disperse. The court denies a recovery on the ground that the deceased was not charged with a crime and that a lynching required this as an essential ingredient.

"An essential element of each of these definitions is that the person unlawfully injured or punished was charged with or suspected of some crime. The common understanding of the term "lynching" involves such a charge or suspicion. . . . At the time Simpson was shot, he was a police officer of the City of Chicago, endeavoring to discharge his duty. Manifestly he had not committed, nor was he even suspected of any offense. The judicial department is not permitted to extend statutory provisions beyond their plain language and intent."

The court disregards its own statutory definition of "mob" and imports a restrictive concept of "lynching" from law dictionaries. We may hope, however, that this aberration of the Illinois court will prove anomalous.[22]

The Ohio statute, as noted previously, defines lynching as an act of violence by a mob.[23] This seems to be an obsolete meaning of the term.

[21] 323 Ill. 203, 153 N. E. 821 (1926), reversing 225 Ill. App. 31.

[22] In Brown v. Orangeburg County, 55 S. C. 45, 32 S. E. 764 (1900) the South Carolina court refused to hold that county liability should accrue only when the person killed by a mob was a prisoner.

[23] W. D. Weatherford in his *Lynching, Removing Its Causes* (Nashville, 1916) considers the term to include injury inflicted by mobs, and says, therefore, "lynch-law is peculiar neither to the Southern States, nor to America as a whole."

1910. Chas. C. Butler.[24] "It is only in recent times that the word 'lynching' has been quite generally confined to killing. Formerly it meant any corporal punishment. The punishment took various forms such as whipping, tarring and feathering, cutting off the victim's arms or otherwise mutilating him."

1912. P. W. Black.[25] "In Iowa, as in other states, there has been an evolution in the meaning of the term lynching. In the early history of the state any extra-legal infliction of punishment or exercise of correctional power which resulted in personal injury to the victims was generally termed a lynching. But in the course of time the term has been gradually limited in the popular mind to cases of summary punishment by hanging until the victim is dead."

Questionnaire results show that most of those answering think that the term "lynching" implies the death of the victim. 219 answered this question.

Should mob injury be also included (in a statutory definition) as lynching?

85 answered yes; 116, no; and 18 gave qualified answers.

But should the same consequences that follow mob death—fining the county, removing the sheriff, etc.—also follow mob injury?[26] The cases of mob injury that arise range all the way from the traditional tarring and feathering to castration and other manifestations of sadism. For example, the *Guardian* of April 20, 1914, reports a Texas case where a mob seized a Negro for kissing a white woman, sheared his ears, slit his lips, and mutilated him in other ways. In the following month at Sante Fe, New Mexico, the press reported the seizure of a foreigner from jail by a mob of twenty which stabbed him "until almost dead."[27]

It does not perhaps shock our emotional sense of fair-

[24] "Lynching," *American Law Review*, Vol. XLIV, 202.

[25] "Lynchings in Iowa," *Iowa Journal of History and Politics*, Vol. X, 160.

[26] The results of the questionnaire as to this aspect of the problem are given *post*, pp. 55 and 73.

[27] *Atlanta Constitution*, May 1, 1914.

ness to penalize a county for an extreme case of mob injury as well as mob death, but there should be in a statute a descriptive and flexible abstraction—"aggravated mob injury"—open to judicial construction on the facts and circumstances of each case.[28]

None of the conceptions of lynching formulated by our lawmakers squarely accords with those of lexicographers and compilers of lynching statistics.[29] Dictionary definitions since 1842 have contained the idea that not only is death necessary, but death of a person charged with a particular offense which would make him amenable to the law.[30] The compilers profess adherence to this theory, but their practice seems to be to include all cases of mob deaths, except those resulting from riots.

"The working definition which compilers of lynching records have generally used is that 'Lynching has to do with individuals supplanting the law and acting in defiance of the law.' The result is that lists of lynchings have generally included only those cases in which individuals charged with offenses which made them amenable to the law are put to death without due process of law. . . . The practice in general of compilers of lynching records has been not to include in such records persons put to death in what are commonly designated as riots. The whole matter would appear to turn upon where one is to draw the line between riots, when there is the promiscuous killing of individuals, and lynchings, where particular individuals are seized and put to death for alleged particular offenses."[31]

[28] The American Civil Liberties Union published the following as the record of mob violence in 1922. (Pamphlet on file in Chicago Public Library):

		White		Negro	
		Men	*Women*	*Men*	*Women*
Lynched	102	33	..	69	..
Tarred	63	60	1	2	..
Flogged	167	122	4	39	2

[29] For discussions of the etymology of the term see the following: Roy Steelman, *A Study of Mob Action in the South* (1930). MS. in Library of University of North Carolina); Tyree, "The Origin of Lynching," *Green Bag*, Vol. XXV, 393; Albert Matthews, "The Term Lynch Law," *Modern Philology*, Vol. II, 2.

[30] See Monroe N. Work, *The Law vs. The Mob* (Pamphlet No. 4 of The Commission on Church and Race Relations, 105 E. 22nd St., New York City).

[31] *Ibid.*, 5-7.

In practice, cases where the deceased was accused of any kind of social or legal offense, or where he was accused of none, are regularly included. For example, in 1918 along with lynchings reported for legally punishable crimes, mob deaths for the following offenses were included by the National Association for the Advancement of Colored People as lynchings: "disloyal remarks, reason unknown, disagreement with landowner."[32] For other years the following accusations against persons "lynched" are listed by Tuskegee Institute: bringing suit against white man, frightening school children, trying to act like white man, seeking employment in restaurant, expressing sympathy with murder of white men, denouncing sailor's part in Chicago Race Riot, disrespectful utterances against President Wilson, using offensive language, boastful remarks, expressing sympathy with lynched Negro, and conjuring.[33] Whatever there may be in the mind of the compiler necessary to characterize a killing as lynching, the nature of the offense charged against the deceased as legally punishable or not does not assume in practice the professed importance in theory. All compilers seem to agree that mob injury is not lynching. We have noted that under the Ohio law it is so considered.

The constituency of the mob is given no significance in deciding whether or not there is a lynching. The following, however, are interesting variations from the normal: 1. In Mississippi in 1900 and in Kentucky in 1901, Negroes were lynched by mobs composed of Negroes.[34] 2. In Wyoming in 1912 a Negro rapist, jailed for safe keeping,

[32] *Ninth Annual Report of the National Association for the Advancement of Colored People* (New York, 1919), 18-19.

[33] Files of Department of Records, Tuskegee Institute.

[34] *New York Times*, October 24, 1900; *Birmingham Record Herald*, September 12, 1901. See also State v. McCoy, 110 Mo. 517, 20 S. W. 240 (1892): "Defendant offered in the cross-examination of one of the State's witnesses to prove that a mob of Negroes gathered in Belvidere Street to storm the jail and lynch the defendant."

was lynched by his fellow convicts.[35] The manner of killing ranges all the way from burning to drowning.

1912. P. W. Black.[36] "A classification of the kinds or types of lynchings reveals the following types arranged in the order in which they have most frequently occurred: hanging until dead, whipping, stretching by the neck or thumbs, tarring and feathering, shooting to death, assaulting, banishing, shooting and wounding, egging, putting to death by other means and drowning and ducking. . . . Theft in its various forms has been the most frequent direct cause of lynchings in Iowa."

There is an ironical and amusing consequence of this divergence between legislator and statistician on this question of what comprises a lynching. By common acceptance of the bulletins of compilers one state may consider itself free from lynchings during the period reported on when under its literal law many of its killings and injurings may have constituted a lynching. Another state may be recorded with a lynching which under its law is not so considered.

Some writers on the subject of lynching seem to exhibit difference of opinion with the lexicographers and the professed theory of the compilers, that a person is lynched only when he was supposedly guilty of some legal offense.

1899. Sam C. Presley.[37] "The term lynching is defined as 'The administration of summary justice without authority of law.' It implies lawless concert of action among a number of members of a community to supply the want of criminal justice or to anticipate its delays, or to inflict a penalty demanded by public opinion, though in defiance of law. Thus theoretically in lawless communities, lynching is supposed to deal out justice to malefactors who would escape punishment by the ordinary legal process, and this lawless violation is intended as a protection to society."

A writer of the same period seems to take another view:

[35] *Montgomery Advertiser,* October 3, 1912.
[36] *Op. cit.*
[37] *Negro Lynching in the South* (Washington, 1899), 25.

1899. Francis J. Grimke.[38] "What is lynching? It is the summary execution of an offender, or supposed offender, without due process of law, by a self-constituted and irresponsible body of men. A careful study of this definition will show that a mob implies five things. It implies (1) that there are laws which fully provide for the punishment of the alleged offender, if found guilty. (2) That there are officers who have been entrusted with the execution or enforcement of the laws. (3) All the machinery necessary to establish the guilt or innocence of the prisoner. (4) Power sufficient on the part of the properly constituted authority to enforce the penalty of the law. (5) An unwillingness on the part of the mob to allow the law to have its course. . . ."

The Southern Commission on the Study of Lynching would require an element of publicity and open defiance: "The chief distinction between a lynching and a gang murder is that, whereas a gang murder is premeditated and carried out by a few people in conspired secrecy from constituted authorities, a lynching is usually spontaneous and carried out in a public fashion with scores, hundreds, and not uncommonly thousands of eye-witnesses. Gang murderers operate in secrecy to evade the law; lynchers operate in the open and publicly defy the law."[39]

Then the Commission quotes two 1930 cases as of questionable classification—Mincey of Ailey, Georgia, and Mitchell of Thomas County, Georgia. "In many respects," it is said, "they were like the gang murders in the large cities."[40]

Enough has been said to show that the legislature cannot, perhaps, and, certainly, should not try to formulate a scientific definition of lynching or of a mob. Rather there should be a generalization broad enough to allow each case to be decided on its individual aspects. The following is suggested:

"Lynching is the killing or aggravated injury of a human being by the act or procurement of a mob."

[38] *The Lynching of Negroes in the South. Its Causes and Remedy* (Washington, 1899), 5.

[39] *Op. cit.*, 73.

[40] *Ibid.*, 67.

CHAPTER V

MUNICIPAL LIABILITY

ELEVEN STATES provide for a recovery against the city and/or county in which a lynching or mob death occurs in amounts ranging from $1000 in Nebraska to $10,000 in Pennsylvania.[1] They are Connecticut, Kansas, Illinois, Minnesota, Nebraska, Ohio, Pennsylvania, South Carolina, New Jersey, North Carolina, and West Virginia. In six states provision is made for such a recovery in cases of mob injury. They are Illinois, Kansas, Connecticut, Ohio, Wisconsin, and New Jersey. The amounts range from $500 in Ohio to $5000 in Illinois.

This device of fining a governmental unit which is the scene of mob violence seems to have a well recognized parallel in English jurisprudence.

1870. Jeters, J., in Gunter v. Dale County, 44 Alabama 639. "The law involved in this litigation is not a novelty, nor is it founded upon principles which have been tried and have failed, or which have been condemned by statesmen and legislators of the highest quality.

"The English government is one of the oldest and one of the most powerful in Europe, and possibly, in the world, and it has been one of the most successful in its efforts to protect the lives, the peace and liberty of its people. From it we derive our social habits and the larger portions of our own law, and the principles by which these laws are justified.—Cooley, p. 21 *et seq.* For the purpose of protecting the citizen against robbery and assassination, that government, from a very early date, made a portion of the people responsible for the robberies and assassinations committed within certain prescribed bounds. . . . In the common law system, which, to a very great extent, is our system, the

[1] See *American Law Reports*, Vol. XIII, 751.

legislators of the mother country, taking the natural division of the people into families as a basis combined these families into tithings; the tithings into hundreds, and the hundreds into counties. The tithing was ten families; the hundred was ten tithings; and the county was an indefinite number of hundreds. 1 Bla. Com. 116, 117 (Maig).

"The communities of hundreds, consisting of ten families, were held responsible for many mischiefs and robberies, which were committed among them, when the guilty party was suffered to escape without conviction. This is still the law of the mother country and it has been found to work well in aiding the suppression of secret crime, or as Judge Blackstone says, crimes committed 'by persons in disguise or with their faces blacked' (citations omitted). The general assembly of this state have in this statute simply applied this ancient, universal, and salutary principle of protection for the lives of its citizens to our own law."

Despite its time-honored nature, however, this device has met with a good deal of unpopularity. In fact, efforts have been made in South Carolina, Ohio, and West Virginia to abrogate the constitutional and statutory enactments which make such provisions.[2] Many legislatures have voted down such laws, sometimes in the face of hearty executive approval.[3] And a Delaware Governor is on record as having vetoed a proposed bill to fine the state $1000 for each lynching.[4] 118 out of 222 responses to the questionnaire voice a disapproval of this remedy; 80 favor it; while 24 are undecided. This wide-spread dis-

[2] The repeal movement in Ohio is noted in the following: *Cleveland Herald,* October 23, 1926; *Afro-American,* February 13, 1920. As to the movement in West Virginia see *Charleston* (W. Va.) *Gazette,* March 25, 1923. In South Carolina Representative Brickingham of Aiken introduced in the House a resolution to submit a repeal referendum. (The provision is in the South Carolina Constitution). Again in 1931 a similar move was made by Representative Mason of Oconee. See *Sumter* (S. C.) *Item,* March 27, 1931.

An indication that the repeal sentiment in South Carolina was not strong is the response South Carolina lawyers and judges made to a question on the desirability of the remedy. Out of 34 answers, 22 were in favor of it; 7, against it; and 5 were non-committal.

[3] See discussion on attempted legislation, *post,* p. 112.

[4] *Philadelphia Public Ledger,* May 11, 1927.

approbation makes a study of this type of legislation of unusual importance.

The content of these laws varies. Connecticut, Kansas, and North Carolina do not provide any fixed amount of liability. South Carolina provides a minimum of $2000. Pennsylvania provides for $10,000 in every case. The others provide for maximum sums ranging from $1000 in Nebraska to $7500 in Minnesota. The recovery is limited to dependents in Illinois, Minnesota, and New Jersey. In Pennsylvania and Connecticut the recovery is limited to cases where county officers were not reasonably diligent in affording protection to the deceased. Connecticut and New Jersey make the city liable as well as the county. Nebraska[5] and Ohio make special provisions for the administration of the sums recovered for the benefit of the family of the deceased, and make the sum exempt from the claims of creditors of the deceased. The North Carolina statute has some special features of which note will be taken later.

How have these laws been administered and with what effect? The South Carolina law (a constitutional provision) dates from 1896 and has been used more than any of the others to penalize a county for a mob death. The relation between the lynching record of that state and its record for the enforcement of the type of law in question is set forth in the following table.

		No. Lynchings Year of Enforcement		*No. Next Year*		*Average Lynchings Per Year*			
						Before		*After*	
Year	*County*	*State*	*County*	*State*	*County*	*State*	*County*	*State*	*County*
1913	Clarendon.	2	1	4	0	3.5	0	1.2	0
1918	Barnwell..	1	1	1	0	3	.12	1	
1921	Laurens...	5	0	1	0	2.14	.095	1	0
1924	Allendale..	1	0	0	0	2.48	.04	.5	0
1926	Lexington.	1	0	0	0	2.33	.07	.5	0
1930	Oconee....	2	1	?	?	2.16	0	?	?

[5] The maximum recovery in Nebraska is $1000. Of this a maximum of $500 may be alloted by the court to the plaintiff's attorney.

These six cases represent a percentage of only ten of South Carolina's lynchings. The average number of lynchings per county for each year is .04. Thus these fines were imposed on counties the lynching record of which is equal to or above the state average. Averages for counties in which no fine has been imposed, however, range from zero (in nine counties) to .2 in Aiken and .23 in Orangeburg.

The table shows that each county which has been fined has had no more lynchings, and that the average number of lynchings per year in the state has declined sharply after the infliction of each penalty. Again it is an imponderable question just what influence this type of enforcement had on the decreasing state and county record.

This type of statute seems to have been utilized far more frequently to penalize counties for damage to person and property in what are commonly called riots.[6] The Negro press in Chicago reports that "the city almost went into bankruptcy in paying $5000 to these (parties aggrieved in race riots of 1919) claimants and for this reason there is little likelihood of a recurrence of mob lawlessness in Chicago."[7] No quantitative data on so-called riots are available, and, for this reason, it is impossible to say with certainty what the effect of this enforcement has been on the recurrence of this type of mob lawlessness. The hypothesis seems sound, however, that if this type of legislation does tend to have the desired effect, it has been used to better purpose, by virtue of the greater frequency of use, in reducing riots than in reducing lynchings.

[6] See the following titles in *Decennial Digests:* Counties, Sec. 148; Municipal Corporations, Secs. 740, 742(4), 742(5), 743. See also *Baltimore Afro-American,* March 10, 1922: "59 suits aggregating claims amounting to $100,000 have been filed here (Kansas City, Kansas) in the city court against the city growing out of accounts of mob violence for the past two years. Independence, Kansas, has had judgments returned against it of $37,250 under the state anti-lynching law and other suits are still pending." Record exists also of the following recoveries: 1. $270 for injury, Ohio. *Independent Clarion,* November 11, 1919. 2. $5000 for injury, Kansas. *Chicago Whip,* September 30, 1922. 3. $4500 for injury, Illinois. *St. Louis Argus,* December 18, 1925. 4. Unreported amount for death, Ohio. *Chicago Whip,* October 30, 1926. 5. $300 for injury, Kansas. *Kansas City Call,* October 18, 1929. For other cases see *ante,* pp. 39-42.

[7] See Files of Department of Records, Tuskegee Institute.

A difficulty encountered in South Carolina in recovering under the local statute suggests the desirability of clarifying the procedure. In 1931 in South Carolina the widow of a lynched person secured a judgment against the delinquent county for $2000. The county supervisor told her that he had no funds with which to pay the judgment and the county treasurer and auditor said they were without authority to levy and collect a tax for this purpose. A mandamus was finally gotten from the Supreme Court ordering the supervisor to place the $2000 item in the next appropriation bill.[8]

It would seem desirable, therefore, to provide for a special levy[9] and provide further that failure on the part of the proper county officers to make the levy or pay the judgment shall place them in contempt of the court issuing it.[10]

It might be well, too, to provide for a mandatory directed verdict on a showing of the lynching:

1910. Chas. C. Butler.[11] "The reluctance of juries to find for the plaintiff sometimes renders such acts difficult of enforcement. This difficulty would be lessened if the act provided for the recovery of a certain amount fixed by statute in case of death and . . . for certain disabilities. This would narrow the discretion of the jury. In case of death by mob violence it would ordinarily be an easy matter to prove the manner of his death. In such cases the court could frequently direct a verdict for the plaintiff for the amount fixed by statute and if the trial court failed to do so in a proper case the appellate court could correct the error."

In North Carolina the liability of the county occurs only when there has been custody of the deceased person.[12]

[8] See the following: *Columbia* (S. C.) *Record*, March 16, 1931; *Journal and Guide* (Norfolk, Va.), March 28, 1931.

[9] Nebraska makes this provision.

[10] West Virginia makes this provision.

[11] "Lynching," *American Law Review*, Vol. XLIV, 218. In Kirkland v. Allendale County, 128 S. C. 541, 123 S. E. 648 (1924) a verdict was directed for the plaintiff by the trial court, and this ruling was approved on appeal.

[12] In cases of mob injury, Ohio makes the recovery larger where the injured person has been taken from the custody of officers.

In fact, the deceased must have been lodged in jail; there must have been an unsuccessful application for extra guards; and the refusal of the application must have resulted in the lynching. Besides throwing a suit for recovery under this statute into the uncertain field of proximate cause, the statute is, in this case, unsound in imposing the custody limitation. It has been noted that data are available on 18 of the 31 lynchings in North Carolina for the period 1900 to 1921 and that only seven of these were cases of lynching following a removal from jail.[13] Whether in these seven cases there were the requisite requests for additional guards it is impossible to determine.

The conventional ground of the attack on this legislation is that it is unfair to make all the taxpayers of a county bear the financial burden of the malfeasance of a group. Another objection, lack of workability, voiced over a score of years ago by Bishop Kilgo, can be readily answered by mentioning a few recoveries against counties. "It (moral disposition)," said the Bishop, "which produces lynching will not grant the family of the criminal a reward for his crime."[14] But the argument of unfairness is easier to damn as emotional than to answer. When the peace officers, the chosen representatives of the electorate, have not done all that could reasonably be expected to prevent the lynching, the taxpayers may reasonably be considered to have shirked a duty and justly invoked a penalty. 56 out of 136 categorical[15] answers to the questionnaire, on this point, indicate a belief that the line should be drawn so that the county is fined only when its peace officers were derelict in their duties.[16] The remaining eighty would fine the county irrespective of this condition. How is this to be justified? Perhaps the answer is that the ethical consequences of lynchings are serious enough to require a

[13] See p. 35, *supra*.

[14] "An Inquiry Regarding Lynchings," *South Atlantic Quarterly*, Vol. I, 4.

[15] Forty-five gave qualified answers.

[16] Maryland, Pennsylvania, and Connecticut expressly so provide, but South Carolina explicitly excludes the materiality of this factor.

penalty on mere passivity. This idea is well, if flamboyantly, expressed in the following language of a Negro lawyer:

1894. R. C. O. Benjamin.[17] "Let it be intelligently understood in the beginning that there are good people in the South as well as there are bad people in the South and that we do not hold the former responsible for the inhuman brutalities of the latter, only so far as lies in their power to prevent them. A failure on the part of the good people of the South, through carelessness, indifference, or wilful neglect to enforce the law of the land against those who commit crimes, makes them morally responsible for the crimes committed. The smoking ruins of devastated homes and the unsightly aspect of the unburied bodies of murdered Negroes . . . is no less blameable upon the *good* people of the South who look on with utter indifference than it is upon the *bad* people of the South who actually committed the wrongs.

> " 'Hear him, ye Senates; Hear this truth sublime—
> He who allows oppression shares the crime.' "

Certainly in one reported case there would be no objection of unfairness. The *New Orleans Item* of July 15, 1914, reports that "a Coroner's Jury at Lake Coromorant, Mississippi, took down the body of a lynched person for an inquest; then they strung it back up because the county had no funds to bury paupers."

It is not believed that this sort of penalty pinches the pockets of lynchers or would-be lynchers. Our evidence comes from the findings of the Southern Commission:

"The majority of persons who took active part in the lynchings were unattached and irresponsible youths of twenty-five or less, many of them not yet out of their teens. . . . As to the ownership of property, the known active lynchers were generally propertyless. . . . The courthouse at Sherman was fired by a group of teen age boys who owned no property. The boys were urged on by a group of propertyless older people, and more than one was heard to say, 'Let 'er burn down; the taxpayers 'll put 'er back.' "[18]

[17] *Southern Outrages—A Statistical Record of Lawless Doings* (———, 1894).
[18] *Op. cit.*, 37.

Therefore this device must be justified, if at all, on the ground that people who do not lynch must be forced to pay until they busy themselves to prevent others from lynching.

Six states make provision for the liability of the county to a person injured by mob violence. They are Connecticut, Illinois, Ohio, Wisconsin, Kansas, and New Jersey. The same considerations that apply to this device in cases of mob death seem applicable, except that its use for mob injury is obviously a more drastic step. A majority of the persons replying to the questionnaire are not willing to go this far. 201 replies were received to this question:

Should the county be also fined for aggravated mob injury?

The answers were 44 affirmative, 148 negative, and nine qualified. Furthermore, four of the states, while providing recovery for mob death, will not take the more drastic step of recovery for mob injury. They are Minnesota, Pennsylvania, South Carolina, North Carolina. However, when one considers that ten states[19] which have provisions imposing liability on the county for mob injury to property, have no similar provision for mob injury to person, the device seems too infrequently used, in view of the greater social gravity of the latter offense. Moreover, there is little likelihood that the county can be fined in the absence of a statute.[20]

The following is suggested as embodying the best features of the existing laws of this type:

Section 1. The county in which a lynching occurs shall be liable to each lynched person or his estate for a penal sum of not less than $2,000 nor more than $10,000 to be recovered in a civil action brought in any state court.[21] The court shall direct a verdict in

[19] California, Kentucky, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, Rhode Island.

[20] See, for example, Brazzill v. Lancaster County, 132 S. C. 347, 128 S. E. 728 (1925) denying a recovery for mob injury. See also *American Law Reports*, Vol. XIII, 751.

[21] See Mullens v. County Court of Greenbrier County, 166 S. E. 116 (W. Va. 1932):

favor of the plaintiff if the only reasonable inference to be drawn from the evidence is that death or injury resulted from mob violence. Otherwise the case shall be submitted to the jury. In the event of a recovery, the defendant county or city shall be directed by the court to pay a reasonable amount as fees for the plaintiff's counsel.

Section 2. The amount recovered shall be included in the next tax levy. Failure on the part of the proper officer to do so, or failure on the part of the proper officer to pay the judgment shall place the officer or officers so failing in contempt of the court issuing the judgment.

"The statute provides that the county, in which a person charged with crime has been taken from a state, county, or municipal officer, lynched and put to death, shall be subject to a forfeiture of $5,000, which may be recovered by appropriate action, in the name of the personal representative of the person put to death, brought for the use of his dependent family or estate, 'in any state court.' The trial court sustained a plea in abatement to its jurisdiction on the ground that the action should have been brought in Greenbrier county, and certified its ruling to this court for review. . . .

"As already observed, both the letter and spirit of the statute in this case uphold the contention of plaintiff. The use of the writ of habeas corpus is frequent, while actions under the lynching statute will necessarily be rare, but subject to local influence as anticipated by the Legislature."

See also the most recent development in this case reported in the *Roncevente* (W. Va.) *News*, January 14, 1933:

"Greenbrier county's new prosecuting attorney, Joe M. Holt, argued a demurrer in the Kanawha county circuit court at Charleston Wednesday, to two suits instituted there against the Greenbrier County Court asking the statutory $5,000 damages in each case for the benefit of the estates of the two Negroes lynched west of Lewisburg by a mob in December, 1931.

"Prosecutor Holt attacked the anti-lynching statute as a legislative 'usurpation' of judicial authority, asserting that under the statute, the County Court would be deprived of property without due process of law and that the law in effect was a bill of attainder inflicting penalties without the intervention of the judiciary. The prosecutor further argued that although the State statute provides for a trial by jury, that there was nothing for the jury to decide, after the plaintiffs had proved that five or more men constitute the mob that entered the jail and took out the prisoners and hanged them, but to award damages in each case.

"The damages are sought by Thelma Mullens, of Leslie, administrator of the estate of George Banks, and Margaret Jackson, of Huntington, administrator of the estate of Thomas Jackson. Banks and Jackson were in jail under indictment for slaying Constable Joe H. Myles and his deputy, Jack Brown, at a Negro dance hall at Leslie during a row which Myles and Brown attempted to quell.

"It was once held that the suits under the lynching statute should be tried in the Greenbrier court, and later this was reversed and suits instituted in Kanawha county."

Section 3. The amount recovered shall, if the case be one of death by mob violence, be exempt from all claims by creditors of the deceased.

Section 4. Each county through which the mob shall have passed shall be liable as herein provided. But a recovery against one county shall bar a recovery against all the others. All said other counties, however, shall be liable to the county against which the judgment is recovered in a suit for contribution to share equally the expense both of the judgment and the costs.

Section 5. In addition to the ordinary civil and criminal liability to which they are subject, all members of the mob shall be jointly and severally liable to each and all of the counties which shall have had to pay a judgment or judgments under the provisions of this act.

CHAPTER VI

OUSTER OF PEACE OFFICERS

NINE STATES make provisions for the removal[1] of peace officers who fail to prevent lynchings. They are Alabama, Illinois, Indiana, Kansas, Kentucky, Minnesota, South Carolina, Tennessee, and New Jersey. The majority either proscribe the ousted officer by stripping him of the right to hold future office or impose fines in addition to the ouster. The officer is protected through procedures outlined for reinstatement.

The one condition common to all these statutes is that the person killed or injured must have been in the custody of the officer. Some of them are limited by their application to the sheriff alone. Others apply to any peace officer. In four states—Illinois, Kansas, Kentucky, and New Jersey—the mere fact of a lynching calls for the summary and automatic removal of the peace officer by the Governor, with optional reinstatement by him in Illinois and New Jersey and mandatory reinstatement in Kentucky and Kansas on a showing that he had done his duty. All four, however, provide that the lynching shall be *prima facie* evidence of his failure of duty. In Indiana[2] and Tennessee the removal takes place only upon conviction; in Alabama, only after a judgment of guilty on im-

[1] This discussion concerns only ouster legislation. Georgia and Idaho make the peace officer guilty of a misdemeanor in failing to suppress mob violence; Pennsylvania makes him guilty of a felony. Alabama imposes this penalty in addition to the ouster.

[2] Formerly, however, Indiana had the automatic type of removal statute: "If any person shall be taken from a sheriff or his deputy having such person in custody and shall be lynched, it shall be conclusive evidence of failure on the part of such sheriff to do his duty and his office shall thereby and thereat immediately be vacated. . . ." Provision was further made for optional reinstatement by the governor on the sheriff's showing that he had done "all in his power" to protect the prisoner. Acts 1901, chap. 140, sec. 5. See State ex rel Maxwell v. Dudley, 68 N. E. 899 (Ind. 1903).

peachment by the Supreme Court. A slight variation is the provision of the South Carolina statute for removal upon true bill found, subject, of course, to reinstatement upon acquittal, and the further provision for a venue other than the lynching county nameable by the Attorney General. The Alabama, South Carolina, and Minnesota statutes apply where the person is injured or killed; all others are limited to cases of mob death. The Minnesota statute provides for removal by the Governor in cases both of lynching and attempted lynching where the peace officer has been derelict in his duty. The degree of disqualification by which the officer is proscribed ranges from ineligibility for any office for four years to ineligibility for office of sheriff or any other office for life. Indiana provides for a fine of not more than $1000 in addition to the removal. The phrases used to describe the conduct of the officer which will make the statute applicable vary—"unlawfully suffer or permit" (Indiana); "fail to use all lawful means" (Minnesota); "through negligence, permission, or connivance" (South Carolina); "wilfully or negligently" (Kentucky).

Commentators have been more than usually prone to claim a demonstrable efficacy in the enforcement of ouster legislation to reduce lynchings. B. T. Washington[3] and the Georgia Committee on Race Relations are outstanding examples. The latter state:

"This provision has reduced the lynchings in South Carolina from 5 per year to 3.4 per year. . . . But the annual average has remained at about 12 per year in Georgia for the past thirty-seven years."[4]

No reported case of the enforcement of this provision in South Carolina has been found. To be sure, other factors than the mere existence of this dead-letter statute must be sought to account for the recited reduction of lynchings in

[3] "Lynchings and International Peace," *Outlook*, Vol. C, 554.
[4] *Georgia's Mob Centers* (undated pamphlet published in Atlanta).

South Carolina. But what has been the effect where these statutes have been enforced? The following table sets forth the reported cases:

State	Year of Removal[5] and County	Lynchings That Year		Lynchings Next Year		Average Before		Averge for 5 Years After	
		State	County	State	County	State	County	State	County
Alabama....	1909—Mobile.....	8	1	8	1	7	.33	4.5	.2
Alabama....	1911—Bullock.....	2	0	8	0	7.8	.1	4.5	0
Kentucky...	1921—Woodford....	1	1	0	0	2.7	0	.4	0
Kentucky...	1922—Scott.....	0	0	0	0	2.6	.04	.6	0
Kentucky...	1926—Todd.....	1	1	1	0	2.2	.07	.4	0
Illinois.....	1909—Alexander....	1	1	0	0	.9	.1	.4	.2
Indiana.....	1902—Sullivan.....	1	1	0	0	2	0	.07	0

Although these ousters were effected in only five per cent of Kentucky's lynchings and two of Alabama's, the table shows that there followed in each case a sharp decline in state- and county-wide lynchings. But strangely the very next lynching in Illinois was in the county in which an ouster had been perfected four years earlier. It should be reiterated, however, that this table, like the others of this type, should be taken *cum grano salis*.

A sufficient record of the two Alabama cases exists to illustrate the kind and degree of evidence which has been held sufficient to justify the removal of the officer. *State ex rel Brickell v. Jinwright*[6] seems a clear case. The forceful opinion is succinct enough to be given in full:

"This is a proceeding for the impeachment of said P. W. Jinwright, on account of the fact that one Aberdeen Johnson, who was in the jail of Bullock county, at Union Springs, in the custody of said sheriff, under a serious charge, was taken from his custody and put to death by a mob. The charges are: First, neglect; second, grave fault; third, willful neglect of duty; fourth, incompetency; and, fifth, connivance.

[5] This table is made up from information contained in press clippings and the following cases: State ex rel Maxwell v. Dudley, 68 N. E. 899 (Ind. 1903); State ex rel Garber v. Cazalas, 162 Alabama 210, 50 Sou. 296 (1909); State ex rel Brickell v. Jinwright, 172 Alabama 340, 55 Sou. 541 (1911); People ex rel Davis v. Nellis, 249 Ill. 12, 94 N. E. 165 (1911).

[6] *Op. cit.*

"It is not denied that the mob placed the sheriff in handcuffs, battered down the steel door leading into the jail and also the door of the cell, and took the prisoner out and put him to death. It is shown that it took the mob about 30 minutes without opposition, to get into the jail.

"The defense offered by the sheriff is that, when the mob came to the courthouse and jail, in the morning, he had a conference with them, and they agreed to withdraw, and that they would offer no violence provided the prisoner would be delivered to the sheriff of Crenshaw county when he arrived on the train due at about 6:30 p.m. of that day. The evidence does show that such an agreement was made, that the mob withdrew, leaving their guns in the sheriff's office, and went to a restaurant, about a half mile distant, to get their dinner; that, while there, they were informed by one of the citizens that a telegraph operator had caught a message going over the wire to the effect that the Governor was going to send troops to Union Springs; that the mob then, accusing the sheriff and his chief deputy of acting in bad faith with them, rushed back to the courthouse, went into the sheriff's office, seized their guns, and, finding the sheriff in the hall of the courthouse, handcuffed him, left him under guard in one of the rooms of the courthouse, and proceeded to break into the jail; that this was some time after 1:00 o'clock in the day.

"After having secured a respite, by diplomacy, the sheriff was certainly under the duty to prepare for any emergency. There was no proof that the sheriff of Crenshaw county was really coming that evening. The sheriff knew that troops had been ordered, and that they would reach the place by 4:30 p.m.

"The Governor had given positive orders to place a guard at the jail and protect the prisoner at all hazards, and his own statement shows that he apprehended that the mob spirit would show itself again, yet he did not make any effort to place a guard at the jail. It is true that he notified several citizens, in the morning, that they were deputized to assist him, some refusing and four agreeing to help him, including his chief deputy, yet he did not organize them, did not give them any order what to do, let them go off to their dinners at the same time, without any instruction or agreement as to when they were to return, left the jail without

a single man in it, save the prisoners, left the arms of the mob in his office with the door open, and suffered himself to be completely surprised and overcome by the mob.

"Much testimony was introduced by the defendant for the purpose of showing that the jail was indefensible, by reason of the fact that there were windows through which a defending party could be fired upon by the mob without. The weaker the jail, the greater was the necessity for protecting it. But these windows were all steel-barred, and, aside from the fact that by reason of the bars, and their elevation from the ground, but few shots could be so aimed as to strike persons within. A sheriff, when he accepts the office, takes it with the dangers incident to the discharge of its duties. To measure up to the high duties of his office he must be a man of courage and of resources. There was an excited mob in the town, some of them drinking. Many of the citizens, if not in active sympathy with the mob, had showed at least a disinclination to take any part in preventing the actual accomplishment of their evident design, and it was not a time for sitting supinely down, and resting implicitly upon the truce, when preventive measures might be adopted. As one of the witnesses expressed it, it was a calm, but in all probability only a calm before the storm. It was certainly his duty to be prepared for a defense at this time. It seems evident that the sheriff, with three or four resolute men, armed, could have prevented the entrance of the mob into the jail. If there had been even *one* man on the lookout, when the mob were seen returning to the courthouse, the arms of the mob could have been secured, by either placing them in charge of the deputies, some of whom were sitting around without orders, or else by fastening the door and windows of the sheriff's office.

"It matters not that the prisoner may have been guilty of the most revolting crime known to our laws. The next wave of popular frenzy might deprive of his life one who, upon proper investigation, would be found to be innocent. It is vain for us to write in our Constitution that cherished heritage of English-speaking people, that all persons accused of crime shall have the right to a 'public trial, by an impartial jury,' and shall not 'be deprived of life, liberty, or property, except by due process of law,' if our government cannot or will not enforce it. A law not en-

forced is no law at all. The sheriff who defends his prisoner from violence is defending the Constitution of his state, and perchance the lives, the liberty, and the happiness of his own family.

"Upon a careful consideration of the evidence, and having in view the stringent provisions of our Constitution, we cannot escape the conclusion that the sheriff was negligent in this case. State ex rel. Garber, Attorney General, v. Cazalas, 162 Ala. 210, 50 South. 296. A judgment will be here rendered removing him from the office of sheriff of Bullock county. All the Justices concur."

State ex rel. Garber v. Cazalas[7] is a much closer case. One is impressed by the fact that a majority of the judges, in order to effectuate the clear purpose of the Alabama removal act, intend to apply it drastically. The facts are stated in the opinion as follows:

". . . On Thursday, the 21st of January 1909, while Phillip Fatch, who was a faithful and efficient deputy sheriff, was attempting to serve a warrant on a Negro named Richard Robertson, for a misdemeanor, said Robertson, without any excuse or justification, inflicted a mortal wound on said Fatch, from which he died that night. That it was a willful and deliberate murder, and excited a great indignation in the city of Mobile, and that on the night of Friday, the 22nd of January, 1909, a party of masked men, estimated at from 10 to 20, entered the jail through the basement, and suddenly confronted two jailers (who were sitting in the guard room behind a steel-barred door) with drawn revolvers, and demanded of them to deliver the keys to the cells, which demand was complied with, and the intruders, leaving two armed men to stand guard over said two jailers, proceeded to the cell where said Robertson was confined, took him out, and, at a place not far from the jail, put him to death. It was in evidence that the jail is a modern structure, well-arranged and guarded; that there are two steel-barred doors opposite each other, with a space between, leading into the guard room where the jailers were, but it had been customary to leave the outer door open, as it was on this occasion; also that there were strong wooden doors pro-

[7] *Op. cit.*

tecting the street entrance to the jail building; and that there was also a strong door leading into the basement, which was under the charge of the engineer."

The Alabama Constitution provides that "whenever any prisoner is taken from jail, or from the custody of any sheriff or his deputy and put to death or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached."[8] The court held that the evidence made out a case of neglect and removed the defendant from office:

"The sheriff cannot presume that those who desire to invade the premises will inform him of the fact, or make such a demonstration on the streets as to advertise their intentions. However that may be, when a crime of peculiar enormity has been committed exciting public indignation, when it is known that such crimes always bring about suggestions that the prisoner be taken out and lynched, and, when in addition to that, the suggestion is made to the sheriff that there is the probability of an attempt to take the prisoner and lynch him,[9] ordinary prudence would suggest that the sheriff should at least give orders that all the doors by which an entrance may be effected into the jail should be closed and take other precautions when he leaves it for the night."

Anderson, J., dissenting, interprets the evidence differently:

"The majority concede that conditions were not such as to call for the military or an armed guard to surround the jail, but seem to charge his whole dereliction of duty to the fact that he did not instruct his guards to close the wooden doors and the second steel door to the guardroom. It was utterly impracticable to have closed the wooden doors, as other deputies were coming in with prisoners at all hours of the night. . . . Had they (the jailers) locked themselves so that it would have taken them too long to get out, and an attack had been made elsewhere, it might be said

[8] Alabama Constitution, Sec. 138.

[9] The dissenting opinion states that one J. H. Webb had warned the defendant sheriff to expect an attempt to lynch the prisoner "as sure as a gun is iron."

that the sheriff was guilty of neglect for not instructing them to keep the doors open so as to have ready access to other parts of the building. . . . This court sits as a jury as well as judges, and in the consideration of facts should not lose sight of the human phase of the case. What may appear to them as neglect when measured with the exacting lines of their training and theory may be but an error of judgment upon the part of the average citizen who has had neither a judicial or (sic) military training."

A difficulty has arisen in connection with the administration of this type of remedy which has not been anticipated in any of the statutes creating it. At least two cases are on record where the suspected officer, by resignation, has avoided being ousted and disqualified.[10] This circumvention should be prohibited.

No case has been found where a peace officer has been convicted and ousted[11] because of a lynching. The cases in the table are under the procedure of removal by Governor or Supreme Court. The difficulties of getting favorable grand and petty jury action are illustrated in the following case:

"Yesterday J. M. Ogden, Attorney General, took action to oust Sheriff Jacob Campbell."[12] "Up to this time Ogden had declared he was waiting to give the grand jury an opportunity to act. After a month's investigation the grand jury adjourned Thursday without indicting a single member of the mob and giving high praise for Campbell's (sheriff's) conduct. An Indiana statute provides that when this occurs the Attorney General shall proceed to file affidavit for impeachment against the sheriff and that the lynching shall be prima facie evidence he has been derelict in his duty. Campbell would be tried on these charges in Grant County where

[10] They are both Alabama cases. See *Montgomery Advertiser*, July 1, 1919, and Raper, *The Tragedy of Lynching*, Chap. IV.

[11] But because of the lynching of Sanford Lewis on March 23, 1912, three policemen of Fort Smith, Arkansas were indicted, convicted, and fined $100 under a statute making it a misdemeanor for a peace officer to fail to suppress a riot. Pennewell v. State, 105 Ark. 32, 150 S. W. 114 (1912). And in State ex rel Rowe v. Driscoll, 49 Mont. 558, 144 Pac. 153 (1914) a sheriff was convicted and removed for failure to suppress a riot.

[12] *Baltimore* (Md.) *Evening Sun*, October 16, 1930.

there is believed small hope for conviction. But should he be found guilty he will be ousted from office and fined $1,000."[13]

Public sentiment is fickle in regard to this kind of proceeding. In Alabama its enforcement has met with disapproval, while civic organizations in Georgia and Arkansas have voiced a desire for it. In 1911 Governor O'Neal of Alabama took the above proceedings to oust the sheriff of Bullock County for a lynching which had occurred there. A petition signed by 2,879 persons, many of them the Governor's political supporters, was presented to seek withdrawal of the proceedings. The ouster, however, was perfected,[14] as noted.

The *Atlanta Independent* of January 12, 1922, reports that "The citizens of Colquitt County filed with the clerk of the board of county commissioners a petition urging the removal of county policeman Stewart for allegedly actively participating in the lynching of J. H. Williams." The *Memphis Commercial Appeal* for May 6, 1927, reports that the Chamber of Commerce of Little Rock, Arkansas and other civic organizations passed resolutions

[13] *Indianapolis* (Ind.) *Times*, October 10, 1930.

[14] *Montgomery Advertiser*, April 29, 1911.

In fact, public sentiment exhibits itself in different lights in regard to the enforcement of measures repressive of lynching.

In 1915 the sheriff of Spartanburg County, S. C., repulsed a mob single-handed. The mayor of Spartanburg City and Governor Blease had refused aid. The sought-for prisoner was later acquitted of rape charges, but a number of the would-be lynchers were punished. They were soon pardoned, however, by Governor Blease. At the next election the Mayor and Governor were defeated but the foreman of the grand jury was sent to the State Legislature. See "Punishment for Lynching," *Nation*, Vol. C, 331.

On the other hand, a sheriff who had lost his reëlection because he opposed a mob was, in 1906, singled out for a federal appointment by President Roosevelt. See Albert Bushnell Hart, *The Southern South* (New York, 1910), 211.

Again, it is reported that "the feeling in a county in which a homicide occurred was so high as to prevent the reëlection of the judge who bailed the defendant." Bowman v. Commonwealth, 96 Ky. 8, 27 S. W. 870 (1894).

The Atlanta Constitution, June 10, 1926, reports that "Two figures prominent in the recent lynching investigation went down to defeat in Tuesday's primary at (La Belle, Fla.). They were County Judge W. C. Richards who presided at the inquest and F. H. Crews, foreman of the Coroner's Jury. . . . J. R. Doty, whose wife testified for the State at a habeas corpus hearing in connection with the investigation, also was defeated for member of the State Legislature."

asking for removal of the sheriff, police chief, and mayor for neglect of duty growing out of the lynching of John Carter. The fruitlessness of these efforts seems to demonstrate the need for specific legislation.

In fact, there is a marked necessity for the enaction of this type of law, if the expedient of ouster of peace officers is to be used as an anti-lynching device. In 1919 after a sensational lynching in Georgia, the state judge in the case voiced his helplessness to remove the sheriff and recommended legislation of this type.[15] In Mississippi in the same year the press reported a suit against a sheriff for failing to produce a prisoner (the lynched person) at a habeas corpus hearing—a strange and circuitous way, indeed, to penalize the sheriff. More ingenuity is demonstrated by an indictment and true bill against a Mississippi sheriff in 1926 for "misdemeanor and crime while acting as an officer,"[16] and against another for "failing to perform his duty."[17] But all of these actions appear to have been unsuccessful. Again in 1926 a Florida grand jury reported as follows:

"Our investigation, however (no indictments were returned), abundantly shows that the sheriff . . . and the peace officer made absolutely no effort to disperse the mob or to get the Negro away or to prevent his being hanged, it being the opinion of the grand jury that this lynching could have been prevented if these officers had done their duty. The sheriff . . . having so signally failed to do his duty . . . we feel should be removed from office and we recommend to Governor John W. Martin that this be done."[18]

[15] *Atlanta Constitution,* July 27, 1919. See also reported opinion of Attorney General of Georgia: "The Governor under the law has no authority to remove a sheriff from office for neglect of duty." *Commercial Appeal,* August 19, 1923. *The Savannah Press* made a stirring demand for the removal of a sheriff, who allegedly connived at a lynching in Monticello, Georgia, in 1915. *Literary Digest,* Vol. L, 178. The *Saint Louis* (Mo.) *Republic* long ago made a strong plea for ouster legislation. *Public Opinion,* Vol. XIV, 447.

[16] *New York Times,* November 19, 1926.

[17] *Commercial Appeal,* January 2, 1926.

[18] *Atlanta Constitution,* December 5, 1926.

Under the Florida law, however, it seems that a judgment for the breach of the condition of the sheriff's bond must have been obtained before the Governor can remove him.[19]

The theory underlying ouster legislation is undoubtedly sound. Despite its drastic character, it has received judicial approval in at least one utterance:

1909. Simpson, J., in State v. Cazalas.[20] "Some members thought that it was holding the sheriff to too high a degree of responsibility, and it was moved to make it read 'gross neglect,' but the wording as reported by the committee was retained, and the remarks made by the members of the Convention show that they intended just what they say, and that a prisoner when he comes into the hands of the officers of the state shall be panoplied about with all the powers of the state, and as sacred from interference 'as the ark of the Covenant.' The Constitution makers evidently intended to place the sheriff in the breach and hold him to the strictest accountability for the safety of the persons committed to his care. It must be admitted that the law is severe and exacting, but the evil which it was intended to correct demands strenuous measures of prevention. In this free government of ours respect for the laws is the very base rock upon which must rest all of our liberties, and, if mob law is ever justifiable, then the most cherished principle of that body of laws which we call common, and which have come to us hallowed by the wisdom of ages, and which we have imbedded in our Constitutions are wrong, and the boasted rights and liberties of the American citizen constitute a solemn farce."

Perhaps this type of legislation stimulates responsibility for mob dispersion and prevention at the most strategic point in the whole governmental machine. Of the eighty-five reported cases of frustrated lynchings between January 1, 1930, and October 1, 1931, thirteen were reported as prevented through the use of non-military force.[21] And there are many other recorded cases demonstrating the efficacy of swift and decisive repulsive measures in dis-

[19] Florida General Laws (1927) Sec. 461(9).
[20] *Op. cit.*, note 5.
[21] Files of Department of Records, Tuskegee Institute.

persing mobs. In Barnwell, S. C., on July 7, 1903, the sheriff's eighteen year old daughter, armed with a rifle, dispersed a mob seeking a prisoner in her father's jail.[22] In Paris, Kentucky, on September 2, 1914, while defending a prisoner in his custody, the jailer killed the mob leader, a prominent citizen.[23] At Winnsboro, South Carolina, on June 14, 1915, as a result of the sheriff's strenuous protective measures, the sheriff, the sought-for prisoner, and the mob leader were all killed[24]. Three cases are reported where sheriff's wives have dispersed mobs.[25] At Lima, Ohio, in 1916, in an attempt to make him reveal the place he had hidden a rapist, the sheriff was tortured by a mob. His courageous resistance prevented an undoubtedly threatened lynching.[26] In Kentucky in 1917 a Negro defendant was granted a continuance and sent to an adjoining county for trial. The judge's life was threatened and he recalled the Negro. Governor Stanley appeared in person and countermanded the order. No militia were available. The executive's oratory assuaged the passions of the mob.[27].

On the other hand, the Southern Commission finds that the following was "a representative attitude of peace officers" in some of the 1930 cases:

"'Do you think I am going to risk my life protecting a nigger?' This remark typifies a common attitude of peace officers in communities where lynchings occurred in 1930. In the majority of cases the sheriff and other peace-officers merely stood by while the mob did its work. After the tragedy they said that the mob had taken them completely by surprise, or that, though aware of the impending danger, they were unwilling to shoot into the crowd lest they kill innocent men, women, and children. At

[22] *Ibid.*
[23] *New York News*, September 3, 1914.
[24] *New York Sun*, June 15, 1915.
[25] *Baltimore Evening Sun*, April 20, 1931; *New York Times*, April 26, 1931; *New York Evening Post*, September 2, 1915.
[26] *Atlanta Constitution*, September 1, 1916.
[27] Thomas Randolph, "The Governor and the Mob," *Independent*, LXXXIX, 347.

Marion, Cartersville, Scooba, Union, and Plant City the sheriffs or other peace officers were either in connivance with the mob or else extremely stupid. In each case the mob took possession of the accused in the presence of the officer, who did not fire a shot or make any other real effort to protect the accused."[28]

If then, it is in fact possible to disperse mobs through force or emotional cajolery, should not such practices on the part of peace officers be stimulated by penalizing those who fail to employ them? Indeed, is this not in theory a more direct method of reducing lynchings than the device of a municipal penalty? Most of those persons answering the questionnaire think so. 149 out of 223 replied that the Illinois Statute embodied a desirable general remedy. 52 answers were negative and 22, qualified.

Many of the statutes, however, are open to criticism. Not one of them removes the officer in a case where he did not have custody, but still was negligent. The following table shows that this custody limitation probably will fit the majority of cases, but certainly in Alabama, Tennessee, and South Carolina it leaves a substantial proportion unprovided for:

State	*Number of Lynchings*	*Number Classified*	*Custody*	*No Custody*
Alabama	132	50	26	24
Illinois	12	none	?	?
Indiana	7	5	5	
Kansas	9	4	4	
Kentucky	59	26	25	
Minnesota	3	3	3	
South Carolina	63	26	15	9
Tennessee	73	33	23	10
New Jersey	0	0	0	0

Another danger inherent in this limitation is that it may encourage peace officers to fail to arrest a person threatened with mob violence so that the penalty of ouster can be avoided. The Southern Commission notes that in

[28] *Op. cit.*, 44.

several of the 1930 cases the mob victims were "without benefit of sheriff":

"In Bolivar County, Mississippi, the local deputy sheriff rode out to the place where the man-hunt was under way. When he found that the accused Negro was certain of being caught, he returned to his courthouse office, quite content with the way the thing was being handled. In two other plantation counties—Brazos, Texas, and Sumter, Alabama—the officers deliberately left matters in the hands of the local people."[29]

Perhaps in the Alabama case the sheriff realized that an arrest followed by a lynching would subject him to impeachment by the Supreme Court. This could not have been a factor in the Texas and Mississippi cases because these states have no ouster provisions. But if some officers are somewhat wary of arresting prospective lynchees without such legislation, certainly they would be more so with laws providing for their removal only when they had made an arrest.

However, the responses to the questionnaire are overwhelmingly favorable to this custody limitation. 199 answers were received to this question:

Should the provisions of such an act be made to apply regardless of whether the lynched person was in the custody of the sheriff?

Only 34 answered yes, while 133 answered no. 32 answers were qualified.

Furthermore, provision should certainly be made for the removal of other peace officers, as well as the sheriff. The Tennessee Act, as noted, applies to the sheriff alone. Indeed one judge has argued that the Illinois Act in applying only to sheriffs and deputy sheriffs denies to them the equal protection of the laws in contravention of the Fourteenth Amendment of the United States Constitution. He says in part:[30]

[29] *Ibid.*, 45.

[30] Farmer, J., dissenting in People ex rel Davis v. Nellis, *op. cit.*, note 5.

"No such authority is conferred upon the Governor with reference to a Coroner, Constable or other peace officer from whose custody a prisoner is taken and lynched. . . . It is true that all peace officers are not charged with the same duties and clothed with the same powers as sheriffs; but their duties to protect and safely keep from mob violence prisoners in their custody are the same, and it is difficult to see any reasonable distinction with respect to these matters between sheriffs and other officers similarly situated and charged with the same duties. . . . The object of the act in question is to protect prisoners from being lynched by mobs. Authority in the Governor to remove a sheriff from office who suffers a prisoner to be taken from his custody and lynched was intended to cause such officer to use all means in his power to prevent the prisoner being taken from his custody. The sheriff is not the only officer who has prisoners in his custody, and it is no more his duty to prevent a mob killing his prisoner than it is of other officers having custody of a prisoner. It is as great a wrong and the public is as injuriously affected by a mob taking a prisoner from a Coroner or Constable as from a sheriff. . . . I am unable to see any reason for the distinction made by the act. . . ."

Also those statutes which require a conviction in the courts are too difficult to administer successfully. This is well pointed out by a former Governor of Kentucky:

". . . lynching illustrates the need of making the anti-mob act really an automatic removal law. There should be no means of appeal for reinstatement when a peace officer surrenders a prisoner to a mob, but . . . we had to fight at the last legislature to prevent the anti-mob law being passed with a provision under which the peace officer removed by Governor might appeal to the courts for reinstatement, thus throwing his case back into local politics."[31]

The procedure of automatic removal by the Governor seems clearly superior. The Alabama system of impeachment by the Supreme Court doubtless reaches the same result, but it is more cumbersome.

[31] *Chicago Whip*, March 26, 1921.

The questionnaire results are in accord. 164 categorical answers were received to this question:

Should removal be by a court on conviction, or by the Governor summarily?

93 answered in favor of summary removal by the Governor, 71 by a court on conviction.

Furthermore, no reason is perceived why a peace officer who willfully or negligently allows mob injury should not be removed. It has been noted that only South Carolina, Alabama, and Minnesota so provide. The opinions elicited by the questionnaire are in favor of making the remedy this broad. 199 answers were received to this question:

Should they (provisions of ouster act) be made to apply to cases of mob injury?

102 answered yes, 72, no; while 25 gave qualified answers.

Again, suppose a jailer surrenders a prisoner to a mob. A committee of public-spirited citizens is able nevertheless to avert the lynching.[32] Should not this peace officer be removed? Only Minnesota so provides.

Finally there are certain routine measures of obvious efficacy which a peace officer should be encouraged to use in every case. This could be brought about by requiring for reinstatement a showing that such measures had been employed or that a reasonable attempt had been made to do so.

The requirement for reinstatement of the ousted officer is generally a showing of "reasonable precautions."[33] The failure to take certain minimum precautions should be stated as "cogent evidence" of lack of "reasonable precaution"—removal of the prisoner, arming him, impressing additional guards, requesting militia, etc. This mod-

[32] This seems to have been the situation in State v. Horne, 9 Kan. 119 (1872).

[33] The Governor of Kentucky declared during a reinstatement hearing: "It is the duty of a jailer to resist a mob until he is beaten into insensibility or killed." *Savannah* (Ga.) *Tribute*, April 2, 1921.

ification is suggested by the following type of case: in Leavenworth, Kansas, the Governor offered the sheriff troops to avert a threatened lynching. The latter declined and the threat became an actuality.[34]

The following question was asked on the questionnaire:

Should the sheriff be made to show for reinstatement that he has armed or made a reasonable attempt to arm the prisoner? employ guards? remove the prisoner? That where the prisoner was jailed, the jail was guarded with riot arms, which were used or a reasonable attempt made to do so?

The following table shows the affirmative and negative answers:

Arm Prisoner		*Employ Guards*		*Remove*		*Riot Arms*	
Yes	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
28	91	97	27	98	25	83	31

The provision for optional reinstatement seems best, for the reason that the Governor, while the evidence may show due care, may have a justifiable suspicion that it is trumped up.

The questionnaire opinion favors optional reinstatement. This question was asked:

Should reinstatement be optional with the Governor as in the Illinois statute *supra?*

154 replied, 98 answering yes, 50 no, with 6 being undecided.

The following is suggested as a model ouster law:

Sec. 1. The Governor shall remove the sheriff and declare his office vacant, whenever any person in the county of said sheriff is lynched, regardless of whether such person had been arrested. If a lynching has been attempted, but not consummated, the Governor shall remove the sheriff only on showing that said sheriff did not do all in his power to suppress the attempted lynching.

[34] "The Leavenworth Lynching," *Review of Reviews*, Vol. XXIII, 262.

Sec. 2. The Governor shall remove any other peace officer and declare his office vacant, when any person shall have been taken from the custody of said peace officer and lynched. If a lynching of a person in the custody of a peace officer has been attempted but not consummated, the Governor shall remove such peace officer only on a showing that he did not do all in his power to suppress the attempted lynching.

Sec. 3. The sheriff or other peace officer so removed, unless he be reinstated as hereinafter set forth, shall thereafter be forever ineligible to hold any public office in this state. If the said sheriff or other peace officer resigns after a lynching or attempted lynching before the Governor has had a reasonable opportunity to discharge the duty imposed upon him herein, then said sheriff or other peace officer shall be likewise forever ineligible to hold any public office in this state. The Governor, however, may restore the eligibility of such officer so resigning, if, on proper petition, it is shown that said officer had done all in his power to prevent the lynching.

Sec. 4. If, on proper petition the Governor finds that the sheriff or other peace officer so removed has done all in his power to prevent the lynching, the Governor may reinstate the officer. Provided, failure to employ or to make a reasonable attempt to employ the following measures shall be cogent evidence that the said sheriff or other peace officer has not done all in his power to prevent the lynching: secure guards, remove the prisoner to an adjoining county, summon the aid of bystanders, procure military aid, arm the prisoner or person threatened with lynching, use riot arms, secure an injunction against the lynching, and institute proceedings for contempt of court against the perpetrators of the lynching of a person who has been arrested.

Sec. 5. No sheriff or other peace officer, however, shall be removed under the provisions of this act where military forces have assumed command with authority superseding that of said sheriff or other peace officers by reason of any lynching or attempted lynching occurring during such military authority.

Sec. 6. A sheriff or any other peace officer and their bondsmen shall be liable to any lynched person or to his estate for such dam-

ages as have been sustained, where such sheriff or other peace officer has not done all in his power to prevent the lynching.[35]

A salutary by-product of such legislation should not be minimized. It is well-expressed in an editorial commendation of the Kansas law of this type:

"Those skilled in police work know that frequently it is not a difficult thing to head off a mob if action is taken at the right time —that is before disorder gains organized momentum. . . . The proposed measure may stimulate study of scientific methods of keeping the peace."[36]

[35] The desirability of this section is suggested by the following case which denies such a recovery: State to the use of Cocking v. Wade, 87 Md. 529, 40 Atl. 104 (1898). But see Asher v. Cabell, 50 Fed. 818 (C. C. A. 5th, 1892) and State of Indiana, ex rel Tyler v. Gobin, 94 Fed. 48 (C. C. D. Ind., 1899). See also McPhee v. U. S. Fidelity and Guaranty Co., 100 Pac. 174 (Wash. 1909).

[36] *Houston* (Tex.) *Post*, February 12, 1923. See also the following: W. W. Knollys, "Mobs and Revolutions," *Living Age*, Vol. CLXXII, 3 (a discussion of the tactics of dispersing mobile and stationary mobs by a retired officer of the English Army); F. J. Porter, "How to Quell Mobs," *North American Review* Vol. XIV, 351.

CHAPTER VII

PROCEDURAL DEVICES

Scattered throughout the codes and session laws are special measures designed to facilitate the infliction of one or more of the types of punishments discussed above: (1) Prosecution on information in lieu of indictment. (2) Prosecution by Attorney General in lieu of local prosecuting officers. (3) Provisions for offering rewards and hiring detectives. (4) Change of venue in trial for lynching or ouster of peace officers. (5) Disqualifying jurors who have expressed pro-lynching sentiment. (6) Withholding the privilege against self-incrimination from witnesses in lynching investigations or trials, but granting them immunity from prosecution. (7) Providing special pay for the prosecutor in lynching investigation and trial.

A large number of instances of the enforcement of punitive anti-lynching devices would be a token of the efficiency of the procedural machinery set up to administer the punishments. It has been noted that the number of such instances is small. But there may still be discovered a hypothetical efficiency. On this basis, these procedures are of obvious merit. A detailed discussion, however, should be made in a few cases.

Prosecution on Information. Both Indiana and Kansas create lynching as a statutory crime and make provision for prosecution in such cases by an information filed by the local prosecuting attorney or the state attorney general. In Indiana the delinquent peace officer must be first convicted before he is removed, and in this type of case, provision is also made for prosecution on information. No other states specifically provide for this procedure in the enforcement of anti-mob punishments.[1]

[1] Governor Neff of Texas recommended that this procedure be established for the punishment of felonies. *Commercial Appeal,* January 3, 1923.

This device is apparently grounded on the theory that the necessity for a grand jury indictment has hampered the enforcement of punitive measures. This is doubtless true. The difficulties in the way of securing indictments from grand juries have been noted in Chapter II. The record of the 1930 cases is further evidence. Of 1930's twenty-one lynchings grand jury indictments of lynchers were secured in only six instances.[2] This record would invite no invective if the lynchers had not been known, but the Southern Commission was able in every case where an attempt was made to find the lynchers and discover their antecedents. The salient fact is that in 15 cases where the mob members were notoriously known grand juries did not return indictments.

Further evidence of more remote date of the inadequacy of the indictment system is the record of three successful civil actions by the relatives of lynched persons against mob members. In Texas in 1899 a widow recovered $10,000 from one mob member in a state court.[3] In Indiana in 1900 a widow recovered $4,000 in a Federal court from the sheriff, his bondsman, and four mob members.[4] In Illinois in 1916 a mother recovered $750 in a Federal court from a mob member.[5] Furthermore, lynchers in Tennessee have been punished for contempt of the Supreme Court of the United States and in Florida a lawyer-lyncher has been disbarred by a Federal Circuit Court.[6] No record has been found of indictments in any of these cases.

[2] *Lynchings and What They Mean*, 25.

[3] *Dallas News*, September 29, 1899.

[4] Files of Department of Records, Tuskegee Institute.

[5] *Ibid.* The following interesting civil suits are recorded by the press: 1. In 1914 a widow of a lynched person sued a railroad in a Federal court for $50,000 for furnishing a special train to the lynching mob. She recovered $7,000 *Pittsburgh* (Pa.) *Dispatch*, May 9, 1914. 2. A Negro, the Supreme Colored Chancellor of the Knights of Pythias, sued the L. & N. R. R. in a Federal court at New Orleans for not preventing a mob at Milton, Fla., from forcibly taking him off of a Pullman car. *Montgomery Advertiser*, May 21, 1914. 3. A Negro Pullman porter sued a railroad because a Florida mob dragged him off of his train under a mistake as to his identity. *Chicago Defender*, August 25, 1923.

[6] See *post*, pp. 127 and 130.

This question was included in the questionnaire:

Is it your observation that few, some, many, most (strike out words not applicable) prosecutions for lynching break down because of the impossibility of getting a grand jury indictment?

Out of 133 answers 63 answered "most"; 32, "some"; 22, "many"; 16, "few."

It would seem that in view of the bad record of grand juries in such cases the device in question is a desirable one. Questionnaire responses favor it by 170 affirmative answers to 34 negative and 9 qualified.

Sometimes a constitutional provision stands in the way of a system of prosecution on information. A possible control over the grand jury in these states and in others where the indictment system may prove too entrenched to be extirpated has been pointed out. Judge Gardner of Texas suggests that where the judge selects the jury commissioners which select the grand jury, he can persist in disbanding and reappointing until a grand jury is impaneled which will return an indictment.[7] This, however, is not the sort of administrative practice that can be embodied in a law. But the effect of local sentiment can, at least, be minimized by providing for a special type of jury for such cases. This could be selected by the highest appellate court from the state at large. It is suggested by a reform in the jury system undertaken in New York. Raymond Moley describes it as follows:

"One of the most hopeful attempts at improvement is the 'Blue Ribbon' jury provision of the law of New York State. It provides that in each county having a population of one million or over, a special jury panel may be provided. The commissioner of jurors in a county having the required population may 'select from the persons qualified to serve as trial jurors in such county such members of special juries as the justices of the Appellate Division of the Supreme Court, or a majority of them . . . from time to time direct. In practice, the commissioner of jurors asks cer-

[7] Dr. Frank, *Negrolana* (Boston, 1924), 156.

tain substantial citizens on the general jury list to act as special jurors, and these are used in important cases."[8]

The following are suggested as model alternative procedures:

Sec. 1. All prosecutions under this act may be by indictment or by information filed by the local prosecuting attorney or the state attorney general.

Sec. 1. Whenever a lynching or an attempted lynching shall occur the justices of the highest appellate court of this state, or a majority of them, shall draw up a list of 75 eligible jurors from which the grand and petit juries to investigate and try the case shall be chosen, said list to be made up from the jury lists of as many counties as said appellate court sees fit. The Chief Justice shall immediately convene the court for this purpose, if it is not then sitting.

Prosecution by Attorney General. In 1900, in Virginia, Governor Tyler stated that the entire matter concerning a lynching at Newport News "lay with the local authorities."[9] In 1928 the statute which was passed provided that the Governor may appoint the Attorney General to take charge of prosecutions under the act.[10] There are many reasons why this should be the procedure in cases of lynching.

The lynching rate is greatest where the county population is smallest. The rate for fourteen Southern States in counties of less than 10,000 is 3.2. The rate per 10,000 population with one exception declines steadily until it reaches .05 in counties of 300,000 and over. The exception is for the class of forty to fifty thousand population.[11] The Southern Commission explains this as follows:

[8] *Our Criminal Courts* (New York, 1930), 112.

[9] *New York World,* January 6, 1900.

[10] This is provided also in the Louisiana Unlawful Assembly Act. R. S. p. 462. In South Carolina the Attorney General names the venue in a suit against the sheriff.

[11] Earl F. Young, "The Relation of Lynching to the Size of Political Areas," *Sociology and Social Research,* Vol. XII, 348; W. E. Wimpy, *Lynching: One Evil of the Small County Government* (Baltimore, 1919—Reprint from *Manufacturer's Record*).

"The higher lynching rate in the sparsely populated counties seems due to inadequate local police protection and the disinclination of peace officers, court officials, or citizens to request outside assistance. The general public accepts and relies upon the man-hunt tradition and the lynching custom. The meager political responsibility of the white tenant and the Negro's political impotence in most rural counties merely aggravate the governmental inadequacies inherent in small populations and limited taxable resources."[12]

It has been noted that most of 1930's lynchings occurred in the poorer, more backward counties. Seven of them were in the black belt counties of Mississippi, Alabama, Georgia, and North Carolina. Of these the Southern Commission says:

"A tradition in these counties, respected by sheriff and peace officers as well as by the public, leaves to the planter and his overseer the settlement of any trouble which arises on the plantation among the Negroes themselves or between them and the overseer or planter. Most crimes in these counties are looked upon as labor troubles to be settled by those who own and control the plantations. As a corollary, to all practical purposes, the sheriff and other peace officers are the planters' agents."[13]

The Commission further finds that the local officers are confronted with a worry about their elective positions:

"Though our investigations indicate that most of the active mob members were not actual voters, nevertheless being white men they were potential voters who could vote whenever they would take the trouble to meet residence requirements, pay poll taxes, and register. Hence they were to be reckoned with by men desiring office."[14]

Little can be expected from elective prosecuting officers in communities of such small population and in this atmosphere of clannishness. The State Attorney General should be given charge in every case. Questionnaire responses

[12] *Op. cit.*, 14.
[13] *Ibid.*, 30.
[14] *Ibid.*, 45.

are at least in favor of giving the Governor the power to designate the Attorney General to conduct a lynching prosecution. This question was asked:

P. L. Va. 1928 c. 213 Sec. 4 is in part as follows: ". . . The Governor may designate the Attorney General and other prosecutors (to enforce provisions of the Act against lynching) and spend such sums of money as he may deem necessary." Is this procedure desirable?

178 out of 218 answers were affirmative; 26, negative; and 14, qualified.

Two 1930 cases show that the mere "coöperation" of the attorney general with the local authorities is specious. The Attorney General of Texas went to Sherman and offered the services of his office to the local authorities for the prosecution of those guilty of burning the courthouse, lynching the Negro, and destroying Negro property. Only two sentences of two years each—for rioting and arson—were secured.[15] The Attorney General of Oklahoma offered to coöperate in the Chickasha case, but the handling of the case was left with the local officers and nothing has come of it.[16]

The Attorney General acting with a specially called blue ribbon grand jury could, it seems, be quite effective. However, an objection has been raised against this procedural device to the effect that the giving to a state officer of this duty may make local juries resentful.[17] The answer seems to be that this procedure is designed to avoid adverse local sentiment; that although such a sentiment expressed through the jury can forestall legal punishment in either case, this procedure does insure the fact that more cases will be engineered through the preliminaries to the jury stage. Given an impartial jury, a prejudiced prosecuting officer can still frustrate the whole proceeding. A

[15] Raper, *The Tragedy of Lynching*, Chap. XVI.
[16] *Ibid.*, Chap. XVIII.
[17] Comment of *Asheville* (N. C.) *Times* on the Virginia Statute. See *Literary Digest*, Vol. XCVL, 14.

pro-lynching jury sentiment will doubtless result in a verdict against the state. That hurt local pride will alone do so seems improbable. But this matter becomes of no importance if other than a local jury is impaneled as suggested. The following is suggested as the wording for the procedure in question:

Sec. 1. The Attorney General shall take charge of all prosecutions under this act, and his authority shall supersede that of the local prosecuting attorney.[18]

Rewards and Detectives. In practice, rewards fall roughly into two classes—official and unofficial. There are numerous instances of rewards by Governors.[19] And one of a reward of $5000 offered by a Legislature in Florida.[20] The most striking of the private rewards is the fund of $100,000 set aside by the *San Antonio* (Texas) *Express* to be used for this purpose.[21] The effect of these rewards is difficult to estimate. An inquiry could be made into the relative number of successful prosecutions and indictments with and without rewards, but an assumption of their merit will possibly serve as well.

The reward device is capable of perversion to accomplish the very purpose which its use in this connection seeks to avoid. An offer of the dead-or-alive variety may stimulate lynching. Former Governor Blease of South Carolina has offered the phraseology: " . . . dead or alive—just so there is enough of it to be recognized as him or upon proof of three reputable citizens that know him, that he is dead."[22]

The same technique for measuring the efficacy of re-

[18] The ultimate authority of the Attorney General should be explicitly stated. In prosecutions growing out of North Carolina's strike disturbances at Gastonia in 1929-30 the status of the Attorney General, sent by the Governor, seemed confused. See State v. Beal, 199 N. C. 276, 154 S. E. 604 (1930).

[19] See, for example, "Lynching and Public Sentiment," *Outlook*, Vol. XCVIII, 289.

[20] *Savannah* (Ga.) *News*, November 2, 1911.

[21] "Rewards to Catch Lynchers," *Nation*, Vol. CVII, 218.

[22] *New York Sun*, July 3, 1914.

wards is applicable to the device of employing detectives. Again the device may be safely assumed to have desirable possibilities. Individual cases of inefficiency, however, are on record.[23]

[23] See, for example, "Coatesville Lynchers Free," *Literary Digest,* Vol. XLIV, 1023.

CHAPTER VIII

MILITIA

We may turn now to that type of legislation which we have termed prophylactic. The parlance of journalists has supplied the commonplace, but crisp description, of the situation with which this type of legislation attempts to deal. Against an individual or group of individuals they often report that "feeling was running high." Laws have been devised which seek to satiate or frustrate threats of mob violence. These are of the following types listed in the order of their frequency of existence: (1) Provisions for employing military force and declaring martial law. (2) Removal of a threatened prisoner. (3) Impressing additional guards to protect a threatened prisoner.[1] (4) Change of venue in trial of person for inflammatory crime. (5) Change of venue in rape trials. (6) Arming threatened prisoner. (7) Calling special term of court to try person accused of inflammatory crime. (8) Provision for threatened person to be taken into custody of the law for protection. (9) Provision for clearing court room during testimony of prosecutrix in rape trial.

Any comment on the theoretical inadequacy of these laws should be preceded by the reflection that some of them have been enforced more frequently and successfully than the punitive measures. In 1914 there were 52 persons reported lynched and 17 reported preventions of lynchings by these means. That is, there were more than three times as many lynchings, as there were instances of

[1] In Owentown, Kentucky, in 1902, a mob attempted to take a prisoner from the local jail. The night watchman summoned citizens to his aid and thereby repulsed the attack. See Files of Department of Records, Tuskegee Institute. Compare a Georgia case in 1899 in which this expedient was impossible, because all available citizens were in the mob. "Lynching and Southern Sentiment," *Outlook*, Vol. LXII, 200.

lynchings being prevented. In 1924, ten years later, the opposite is true. That is, there were 45 reported instances of preventions of lynchings and 16 reported cases of lynchings.

LYNCHINGS AND REPORTED PREVENTIONS—1914-1924[2]

Year	Number of Lynchings	Number Preventions
1914	52	16
1915	57	19
1916	54	18
1917	38	18
1918	64	13
1919	83	37
1920	61	56
1921	64	72
1922	57	58
1923	33	52
1924	16	45

A cross reference to figures on the enforcement of punitive measures will show how much more effectively the so-called prophylactic measures are being used.

But the latter, it should be noted, almost uniformly come into operation only after an arrest.[3] Despite their effective enforcement to protect arrested persons, they make no protective provisions to care for the situation of no-arrest which has accompanied an estimated third of the lynchings.[4]

The use of the military forces of the state in cases of mob outbreaks opens up the whole matter of the military as an integral part of the government. This is matter for an independent study in itself. Statutes controlling the creation, training, and use of militia, its effectiveness as a unit of state and national government, relation to civil peace officers, and cost-factors[5]—these, at least, are some considerations which should be made.

[2] *The Law vs. the Mob. Op. cit.* A possible explanation of this table is that the press may have been increasingly conscious of prevented lynchings.

[3] This is not true, of course, of the militia device, nor of the Pennsylvania law. The latter, however, is so technical as to be of doubtful merit.

[4] *Ante*, p. 36.

[5] It is reported to have cost the State of Georgia $3,390 to employ military protection during the trial of a rapist. *Pittsburgh* (Pa.) *Courier*, August 18, 1923.

Short of such a thorough-going investigation, however, there are some cursory observations to be made on the militia purely as an anti-lynching device. As such its record is good and bad.

Eighty-five threatened lynchings were reported as prevented between January 1, 1930, and October 1, 1931. In nineteen of these, military forces were used.[6] In three instances in 1930, however, militia were on hand when lynchings occurred.[7]

But militia appear in their worst light in connection with the lynching problem in an Alabama and in a Virginia case. In Alabama guards sent to keep order in a strike area lynched a Negro who had run into trouble with one of their number.[8] In Virginia in 1914 the militia encamped at Gordonsville attempted to lynch a Negro for an alleged attack on a fellow-soldier.[9] The efficiency of the militia will rise no higher than the calibre of the men who fill its ranks—nor, for that matter, than the men who command and control it. There is the Georgia judge who is reported to have said that he wouldn't call on the Governor for troops to save a hundred Negro rapists.[10] On the other hand, there is the Virginia Governor who wired a faltering captain who claimed it impossible to get his troops to the scene: "Nothing should be impossible to a soldier; you must go."[11]

Sometimes killing has been necessary to quell the mob. For example, twice in 1920, some mobsters were killed and many score wounded.[12] In both of these cases the press gave hearty approval to the stern measures of the militia.[13] But even sporadic killing does not always disperse the

[6] See Files of Department of Records, Tuskegee Institute.
[7] *Lynchings and What They Mean,* 47.
[8] Lancaster v. State, 214 Ala. 2, 76, 106 Sou. 609, 617 (1925).
[9] *Atlanta Constitution,* July 26, 1914.
[10] *New York Age,* July 6, 1911.
[11] Pell, "The Prevention of Lynch-Law Epidemics," *Review of Reviews,* Vol. XVII, 321.
[12] "The Kentucky Cure for Lynching," *Literary Digest,* Vol. LXIV, 20.
[13] "How Tampa Treats Lynchers," *ibid.,* Vol. XCIII, 12.

mob. At least one case sheds some doubt on the oft-voiced theory that one killing will quell a mob. In Ohio in 1897 a jail, securing a Negro rapist, was guarded by militia. In repulsing one attack the militia killed two and wounded six. A subsequent mob attack shortly thereafter resulted in the lynching.[14]

It has been suggested that every lynching county be placed forthwith under martial law with trial of the offenders by a military tribunal.[15] At Sherman, Texas, following perhaps the most sensational of 1930's lynchings, martial law was declared on May 10 and lasted for two weeks. On May 12 a military court of investigation was set up. This court continued its investigation for nearly a week. Sixty-six men and women were arrested and questioned. Twenty-nine were jailed to await the action of the district grand jury, which later indicted them all on evidence transmitted by the military tribunal.[16] It has been noted that but two were subsequently convicted. The ultimate result in this case is not encouraging, but this method of getting evidence for the grand jury seems to have possibilities.

A Georgia Governor has denied blame for lynching on the ground that he had no power to order out the militia in the absence of a request from local authorities.[17] Later a subsequent Governor asserted this lack of power in recommending legislation to remedy it.[18] The Attorney General ruled that this was custom and not lack of legal power.[19] This ambiguity should be avoided in a model law, which would empower the Governor to send military forces to a disturbed area regardless of local request.

But should the military commander or the local sheriff be in charge? In Darien, Georgia, 1930, a military unit

[14] "The Urbana Lynching," *Public Opinion*, Vol. XXII, 741.
[15] F. M. Noa, "Southern Lynchings," *Nation*, Vol. LVI, 407.
[16] Raper, *The Tragedy of Lynching*, Chap. XVI.
[17] *Savannah News*, June 29, 1911.
[18] *Atlanta Georgian*, January 8, 1923.
[19] *Commercial Appeal*, August 19, 1923.

was on hand when George Grant was lynched, but took no active steps to prevent the occurrence. The Commanding Officer said that the Chief Executive had dispatched him only "to coöperate with the local authorities." The latter asserted that, by virtue of the presence of the military, they assumed it to be in charge.[20]

The story of the part played by the military in a Maryville, Missouri lynching makes a grim, though dramatic, interlude in the tragedy. The mayor and local business and professional men wrote Governor Caulfield, warning him of the threatened lynching. Adjutant General Adams accordingly went to the scene. Previously he had instructed Captain Ed. Condon of the local battery of the National Guard to arrange a conference with the prosecuting attorney and the sheriff.

General Adams later said that, when he and the Captain went into the office of the prosecuting attorney for this conference, they found three men present. One of them immediately assumed the rôle of spokesman and said:

"General Adams, I am glad we can have this conference, as I am convinced there will be trouble tomorrow. Of course the matter lies in the hands of the sheriff here" (pointing to the sheriff).

The General said that he then realized for the first time that the spokesman was not the sheriff; that, therefore, he turned to the sheriff and proffered him military aid.

"Well, I don't think we'll need you," said the sheriff, "there'll be no trouble."

The prosecuting attorney said nothing, except that he agreed with the sheriff. Then the General advised the sheriff that under the state law he, the sheriff, would have to make a written request for military aid.

"I am familiar with that," said the sheriff.

The General next proposed that the sheriff write a

[20] Raper, *op. cit.*, Chap. XI.

letter requesting help from the National Guard. The sheriff declined.

"I'll handle the matter with my own deputies," he said, "we won't have any trouble."

"We stayed in conference for an hour and a half," General Adams reports. "I simply could not overcome the apparent antagonism of the sheriff and the prosecuting attorney. I asked again that the sheriff write a notice asking for assistance, and give it to me. If I did not need it, then I would hand it back to him the next day, and he could just consider that he had never written it. He refused to do it. As we left the office, I told Captain Condon to mobilize the battery anyhow, so that, if we were needed, we would be ready."

It is estimated that 250 troops could have been on the scene to prevent the lynching, had the sheriff only complied with the state law requiring him to make a written request for them.[21]

At Emporia, Virginia, in 1900, a mixed mob of Negroes and whites lynched members of both races implicated in the murder of two officers. The Governor had sent troops to protect the jail. The sheriff, judge, and twenty citizens met and decided that the troops should depart. The sheriff ordered them away and the Governor wired the commanding officer that he must obey the order. The lynching, of course, resulted.[22]

These cases seem to demonstrate the need of placing complete authority in the hands of the military. Standing alone, such a suggestion is attractive. If, however, the sheriff is to be automatically removed, should another officer have that authority which presumably the sheriff has so poorly exercised as to require his removal? It seems clear that if the sheriff is to be removed in each case, he should have the ultimate authority. Two ways are open to escape this difficulty. One is to have the sheriff in

[21] *Ibid.*, Chap. XX.

[22] "A Double Lynching in Virginia," *Independent*, Vol. LII, 783.

charge—the other, to make the case where the military is in charge an exceptional one with regard to the removal of the sheriff. The latter seems best at present, in that probably the effects in suppressing lynchings would be more immediate and direct than the effect which would come from a series of removals of sheriffs.

The following is suggested:

Sec. 1. The Governor shall have the power to dispatch such military units to any area where a lynching is threatened as he may think fit. No request from any local officers shall be necessary to enable the Governor so to act.

Sec. 2. The authority of the commanding officer so dispatched by the Governor shall supersede that of all local peace officers in the preservation of the peace against all disorders arising out of the lynching or attempted lynching, irrespective of whether such local officers have made any request for military aid.

Sec. 3. The commanding officer and all subordinate commissioned and non-commissioned officers of said military forces shall be subject to removal by the Governor, on a showing that they did not do all in their power to prevent a lynching or suppress an attempted lynching, and shall be, unless reinstated by him, forever ineligible to hold any public office in this state.[23]

[23] The constitutionality of this section might be assailed on the ground that the state cannot legislate about the removal of a National Guard officer, because he is to be considered a federal officer. The Governor, however, is usually given the power as Commander-in-Chief to appoint such officers, and the doctrine of U. S. v. Meyers, 272 U. S. 52 (1926) that the power to appoint implies the power to remove might be considered applicable.

CHAPTER IX

CHANGE OF VENUE AND TRANSFER OF PRISONERS

THE TABLE GIVEN above comparing lynchings and prevented lynchings does not indicate the number, if any, of lynchings prevented by changing the venue of the trial of a person threatened with mob violence. Although the press has reported no lynchings prevented by this device, the strong probability that there have been such cases remains. This is so because the device in question is a less articulate and sensational way of avoiding lynchings than the devices usually mentioned—militia and force used by peace officers—and, for this reason, the employing of it is less likely to attract the attention of reporters.

Replies to the questionnaire indicate a wide-spread belief that many lynchings are averted by a change of venue. This question was asked:

Is it your opinion or observation that a change of venue often averts a threatened lynching?

Out of 198 answers 123 were affirmative; 45, negative; and 30, qualified.

The Georgia Code provides that "It shall be lawful for the judge of the Supreme Court of the Circuit in which a crime is alleged to have been committed to change the venue for the trial of said case on his own motion with or without petition whenever, in his judgment, the accused party will be lynched . . . if carried back or allowed to remain in the county where the crime is alleged to have been committed. . . . And if the evidence submitted shall reasonably show that there is probability or danger of lynching, or other violence, then it shall be mandatory on said Judge to change the venue. . . . "

Some of the questionnaire responses from Georgia indicate difficulties in the way of the effective use of this statute in particular and the venue device in general.

One lawyer says, "I do not know of any case where change (of venue) has been granted in Georgia. Strangely enough, I do not think this statute has been practised in Georgia." Another says, "My observation is that this is a worthless provision, and the judge does not on his own motion change the venue." A third says: "You can hardly get a change of venue in Georgia. It should be granted often when it is not. Many defendants go to trial when a fair trial is impossible. Our statute is all right—but politics are not."

Many of their brethren differ from the belief that the statute has never been used,[1] but note a reluctance on the part of the judge to do so. A judge indicates this reason, "People of county of crime bitterly oppose removals; judge takes official career in his hands when he directs that it take place." Other lawyers point to the same reason. One says, "Judges, being elected by the people, will not often change venue." Another answers as follows: "Judges in Georgia are, as you probably know, elective, and it is very seldom that one has the 'guts' to change the venue. When requested he generally goes into a bombastic effusion that such a request is a reflection on the intelligence and law-abiding spirit of the inhabitants of the county. I doubt if any of Georgia's permissive statutes bearing on lynching are made use of sufficiently to help the situation very much."

Thirty-six cases have been found in which defendants

[1] For example, this answer was received: "I saw this work admirably in case of Negro charged with murder of a Georgia policeman. He would have been lynched, but was spirited away, venue changed on motion of judge to county only 60 miles away. He was acquitted on first ballot by jury without disturbance anywhere."

A Georgia Governor has gone so far as to suggest a change to a judge conducting a murder trial of Negroes. *Savannah Morning News,* January 1, 1913, and a Missouri Governor has vetoed an anti-lynching bill because of the absence of a provision for change of venue. *Pittsburg* (Kansas) *Sun,* May 14, 1931.

have appealed from the refusal of trial courts to grant their motions for changes of venue predicated on alleged fear of mob violence. These cases cover a range of years from 1858 to 1926. Fifteen of them were reversed.[2] This large per cent of reversal is especially significant in view of the professed doctrine that a motion for change of venue is addressed to the discretion of the trial court and that the court's ruling will be set aside on appeal only in cases of palpable and serious abuse of discretion. One cannot escape the conclusion that trial courts in many of these cases are chargeable with a manifest abuse of discretion. The succinct opinion of Mr. Chief Justice Whitfield of Mississippi in *Brown v. State*[3] is illustrative:

"Whatever conflict there may be in the evidence, so far as mere opinion is concerned as to whether a fair trial could be had in Montgomery County, the testimony for appellant as to acts and circumstances far more potential than mere opinion testimony, demonstrates beyond all doubt that the court erred in not granting the motion for a change of venue. With threats of death at the hands of a mob; threats of having the appellant if they had to blow up the jail with dynamite to get him; with the sheriff bringing him to Jackson to save his life; with efforts made to get him from the train, so that the sheriff had to lock him up in the closet while passing through the town; with testimony of a highly inflamed state of public feeling at the time of the homicide, so that the almost universal expression was that he ought to be hung; with six deputies guarding him, at the very time of his trial, every day in the courthouse; and with sixteen deputies needed to guard and protect this defendant the very night before this testimony was heard by the circuit court—it is a mockery to talk of a fair trial."

Again, a Georgia case, *Graham v. State*,[4] is striking enough to justify a detailed repetition of the facts as reported in the opinion:

[2] See *Century* and *Decennial Digests*, Criminal Law, Sec. 134(4).
[3] 83 Miss. 645, 36 Sou. 73 (1904).
[4] 141 Ga. 812, 82 S. E. 282 (1914).

"Charlie Graham was charged with the offense of murder, and incarcerated in the county jail of Coffee County. On April 6, 1914, he made a motion for a change of venue, under the act of August 21, 1911 (Acts 1911, p. 74). The motion was verified by the oath of the movant, and showed in substance as follows:

". . . Lawrence Newbern, one of the men whom the petitioner is charged with murdering, was a man well known and of large influence, having many influential friends, relatives, and acquaintances residing in every part of the county. Petitioner was reared in another county, and is practically unknown in Coffee County. Ever since the alleged murder was committed there has existed and still exists against him in the county the most intense hatred, prejudice, bitterness, and malice; and this feeling is general and possessed by a large number of the citizens. Ever since the alleged murder there have been constant and numerous threats by a large number of citizens of the county to lynch petitioner. There exists the strongest kind of determination to lynch him at sight, and his life is in serious and grave danger, by reason of the fact that there is danger of his being taken out and hung by a mob. He has been advised that a large body of citizens of the county have formed themselves together for the purpose of lynching him, and that they merely await an opportunity for that purpose. At the time of his arrest, which occurred only a few days before the making of the motion, open threats were made in his presence to immediately lynch him, and certain infuriated citizens would have done so at that time, save for the action of a former sheriff in hurrying him from the place of arrest to the jail, twelve miles distant. . . . On the same night of his arrest, and so soon thereafter as it became generally known that he had been arrested and placed in jail, a large assembly of citizens gathered in said town of Brozton and formed a company for the purpose of coming to Douglas and taking your petitioner out of said jail and taking his life. That said purpose was only abandoned at that particular time because of the fact that the sheriff of Coffee County learned of said intention, and before said crowd left Broxton he got in communication by telephone with some parties at said place, and promised that if the crowd would disperse, and not attempt to lynch your petitioner, that a special term of the superior court of Coffee County would be called immediately, and that your peti-

tioner should be tried at said term, and that the severest penalty known to the law would be meted out to him.

"The solicitor general, on behalf of the state, made no formal answer to the petition, but introduced affidavits in opposition to it. On behalf of petitioner, affidavits were introduced from six residents of the county, who deposed to the effect that they had talked with and heard many citizens discuss the killing; that sentiment against the petitioner was very bitter and inflamed; that in their opinion it would be dangerous for him to be tried in Coffee County, and there would be danger that he would be lynched unless granted a change of venue, and he would be lynched if he should make a fight for his life on the trial and be in any manner successful. One of the deponents stated that the friends and acquaintances of Newbern, one of the deceased men, were determined that Graham should pay the penalty of death for the alleged murder, either from the gallows or by mob violence. A sister of the petitioner deposed that she lived about three miles from the town of Broxton, where the killing occurred, but it was not generally known that she was the sister of the petitioner; that the killing took place on the night of March 21st, and on the following morning a number of people from in and around Broxton came to her house to search for Graham; that some of those present stated that there were about 75 of them searching every pig path for Graham, that they would catch him and he would never see Broxton again, and that they had no idea that there would be anything but pieces left of him within five minutes after he was found; that they further stated that Graham had killed a good man and must pay for the crime; and one of them stated that he had shot at Graham the night before, and thought he had hit Graham in the leg, and was only sorry that it was not in the head; that after her brother was placed in jail she had made several trips to Douglas by railroad, and on nearly every occasion she was forced to hear the most terrible threats of vengeance against him; that only a few days before she made the affidavit she had heard one of several persons who were talking about the case say that there could be 500 people gotten together in a few minutes, who would be willing to lynch Graham, and he had to hang one way or another, and must die for the crime he had committed; and that she had heard from several sources that a crowd

was made up at Broxton on the night of the arrest, for the purpose of going to Douglas to lynch Graham, but that, under a promise from the sheriff that court would be called at once and that Graham would be 'legally hung,' they agreed to wait until they could see whether he would be hung or not.

"In opposition to the motion, counsel for the state introduced the affidavits of 13 persons, in substance as follows:

"They are citizens of the county, and are acquainted with the fact that during the latter part of March Charlie Graham was incarcerated in the county jail on the charge of murder, and has since so remained. Since he has been incarcerated they have heard of no attempt of mob violence or lynching threatened against him, and they are of the opinion that no violence will be done to petitioner, but, on the contrary, it seems to be the consensus of opinion of the people with whom the affiants have talked that petitioner should be accorded a fair and impartial trial by a fair and impartial jury. They are acquainted with a great many citizens of the county, and have talked with a good many of them, and have heard no person express himself as being in favor of lynching petitioner or of doing mob violence to him.

"Affidavits of the ordinary and the clerk of the superior court were to the effect that since the incarceration of petitioner no attempt has been made to lynch him or do violence to him; that they are acquainted with many people in the county, and have conversed with a number of them; that they have heard of no threats of violence; that in their opinion there is no danger or probability of any attempt to lynch or do violence to petitioner; and that they are all well acquainted with the jurors of the county, and believe that petitioner would have a fair and impartial trial if he be put on trial in that county. A similar affidavit was made by the solicitor of the city court, who deposed that he was actively engaged in a campaign for reëlection, and had talked with many people in different parts of the county. The sheriff made an affidavit in substance as follows:

"He is in charge of the jail in which petitioner has been incarcerated since his arrest on March 22d. During that time there has been no effort by any person to do violence to petitioner. Deponent has heard no party make any threats of violence or lynch-

ing toward the defendant. A great many people have been to the jail to see defendant, and deponent has heard no person threaten violence toward him, but, on the contrary, the consensus of opinion among the people with whom affiant has talked seems to be in favor of letting the law take its course. In deponent's opinion the defendant can get a fair and impartial trial before a jury in Coffee County.

"The presiding judge did not issue a formal rule nisi, but heard the motion on the next day after it was made; the state and the movant being both represented, and each side introducing evidence. The motion was overruled, and the petitioner excepted."

A majority of the court thought that "the presiding judge manifestly erred in refusing to grant a change of venue." Two judges, however, dissented, expressing this belief:

"The trial judge was nearer the scene, and better acquainted with the temper of the people than this court. He was better prepared to pass upon the credibility of witnesses; and we think the testimony is ample to support the conclusion that the applicant is not in any danger of mob violence, and, if tried in the county of the alleged homicide, will receive a fair and impartial trial."

The local sentiment of the lynching county readily explains the recited reluctance of judges to change the venue in such cases. The Southern Commission points out generally the provincialism of the community under the happy designation of "county rights":

"In most cases the kinsmen and friends of the injured person demand that the accused be tried in the local court, and protest against the pressure of any 'outside' influence, whether militiamen, lawyers, or organized interest because they fear these will delay trial, sentence, and execution."[5]

[5] *Op. cit.*, 160. One wonders whether Judge Fish's assumption of the good faith of affiants for the state is not, therefore, naive. "Probably," the Judge says, "no application for a change of venue under the act being considered will ever be made where some good citizens of the county cannot be found who can truthfully swear that they do not know of the contemplated or intended lynching, and who do not think it likely to occur." See Graham v. State, *op. cit.*, note 4.

The "county rights" complex is so strong that not only may it make elective judges reluctant to grant changes of venue, but also it may operate as stimulus for mob action in a case in which the change is granted.

Fear of a change of venue has been assigned as a reason for at least one lynching,[6] and the prospective delay occasioned by an appeal from a refusal to grant a motion for change of venue seemed to precipitate the 1930 lynching at Cartersville, Georgia.[7] Moreover, some of the negative replies to the foregoing query of the questionnaire stated that a prospective change of venue often has the perverted effect of stimulating a lynching. Indeed, sometimes an applicant for a change of venue uses the argument that the community opposition to the change shows, *ipso facto*, the necessity for it. For example, in *Terry v. State*,[8] the defendant alleged the following facts in his application for a change of venue:

"That since the reversal of his case by the Supreme Court there have been 'expressions to the effect that he has put the county to enough expense and ought to be killed and the county rid of him.' That after it became known that he would apply for a change of venue, 'he has learned of various threats that if the change of venue was granted, a mob would be formed to take his life and not allow him to go from the county.' "

The defendants averments in *Jamison v. People*[9] were similar:

[6] At Hemphill, Texas, by the local press. Dr. Frank, *op. cit.*, 154.

[7] "The Lynching at Cartersville—A Case Study." Files of the Commission on Interracial Coöperation. To avoid the psychology which would probably cause a threatened change of venue to have this effect—frustration of the desire for local vengeance—an alternative measure might be designed. The trial jury could be impaneled from another district but the trial still held at the locality of the crime. This seems to be possible under the N. C. practice. See Stephenson, *Relation of Criminal Court Procedure to Mob Violence*, address at Blue Ridge, 1917, printed in *Lawlessness or Civilization, Which?* (1917). A further desirable feature of a model law would be to provide that a motion for change of venue could be heard in vacation. A Georgia case has been found where a person was lynched after the judge refused to hear his venue motion in vacation. *Savannah Morning News*, June 29, 1911.

[8] 120 Ala. 286, 25 Sou. 176 (1899). The same was true in Ex parte Chase, 43 Ala. 303 (1889).

[9] 145 Ill. 357, 34 N. E. 486 (1893).

"That prominent citizens of the county have stated that if defendant should obtain a change of venue, he would never be taken from the county alive, and that the people would never permit him to be removed from the county."

A sensible way to obviate this difficulty created by local sentiment hostile to change of venue would seem to be to provide for automatic, mandatory change of venue in certain cases likely to incite lynchings. Records show that accusations against persons lynched between 1889 and 1930 were as follows:[10]

Homicide	1,399
Rape	622
Robbery and theft	267
Attempted rape	249
Felonious assault	214
Insult to whites	66
Miscellaneous	897

Records show further that between 1889-1930 2,936 of the 3,724 persons lynched were Negroes.[11] These two records taken together suggest the desirability of enacting a law providing for automatic change of venue whenever interracial crimes of the sorts above enumerated occur.

It is true that the aforementioned Georgia statute apparently provides for a mandatory change of venue, and that court has found in its terms a special significance:

"This is not the language of permission or discretionary authorization, but is a statutory command, and the Legislature emphasized that fact and saw fit to declare that, if it should be reasonably shown that there was a probability or danger of lynching or other violence, 'it shall be mandatory' on the judge to change the venue."[12]

It takes but a single quotation, however, to show that the provision is, on the whole, quite specious, and that its language of compulsion is illusory and misleading:

[10] Files of Department of Records, Tuskegee Institute.
[11] *Ibid.*
[12] Graham v. State, *op. cit.*, note 4.

"While it is mandatory upon the judge to whom a petition for a change of venue is presented in behalf of a defendant in a criminal case under the Act . . . to change the venue, if the evidence submitted should reasonably show that there is a 'probability or danger of lynching or other violence' it is primarily a question for the judge, upon the hearing of such petition, to determine from the evidence whether or not such probability or danger of lynching or other violence exists; and where the evidence upon such issue conflicts, the judgment denying the defendant's motion to change the venue will not be reversed, unless manifestly erroneous. . . ."[13]

This question was asked in the questionnaire:

Would it be desirable to provide for automatic change of venue in every trial for certain enumerated crimes? If so, for what crimes?

186 answers were received, 40 were affirmative; 139, negative; 7, qualified. The following crimes were enumerated: rape, attempt to rape, child murder, interracial murder, all felonies, all capital felonies, embezzlement of public funds, arson, kidnaping, lynching, bank failures, malfeasance in office, homicide. One is at a loss to explain this widespread opposition to a remedy which seems so desirable and necessary.[14]

The following is suggested:

Sec. 1. No one of the following crimes shall be tried in the county in which it is alleged to have been committed, but shall be tried in any other county to be designated by the judge before whom the case would have normally come for trial:

1. Homicide where the deceased was a white man and the accused a Negro.
2. Rape or attempted rape where the prosecutrix is a white woman and the accused a Negro.

[13] Grenoble v. State, 154 S. E. 304 (Ga., 1930).

[14] A possible explanation may be that any automatic procedure is considered economically unsound. See *post*, p. 103. Furthermore, an attack might be made on the constitutionality of the provision on the ground that it deprives white persons accused of such crimes the "equal protection of the laws." However, the doctrine of reasonable classification is available to meet this objection.

3. Felonious assault where the person allegedly assaulted is white and the accused a Negro.[15]

Of the 85 reported cases of threatened lynchings prevented between January 1, 1930, and October 1, 1931, the threatened person was removed to another jail in 54.[16] It may be asserted, therefore, that in recent times the procedure of removing a threatened person has been used to better advantage in averting lynchings than any of the other prophylactic measures. What are the laws which provide for this efficacious measure?

Twenty-one states[17] have laws providing for the removal of a prisoner in certain cases to the jail of another county or to the State Penitentiary. The manner of ordering removal varies. Removal by order of the judge is the most popular form.[18] The sheriff is empowered to remove on his own initiative in Illinois, Kansas, Missouri, and Tennessee. In Florida and Nevada the Governor must order it.[19] The fewer technical formalities that are necessary to secure removal, the better the statute is for expeditious results. On this basis, the type of law which empowers the sheriff to act on his own initiative seems best.

There are instances where this device has been used without specific statutory authority. For the period aforementioned this was true in Alabama, in two cases; Arkansas, in five; Colorado, in one; Georgia, in seven; Minnesota, in one; North Carolina, in three; South Carolina, in

[15] Robbery and theft, while predominant causes of lynching, probably occur far more frequently without threats of mob violence than the above crimes. They are, therefore, excluded.

[16] Files of Department of Records, Tuskegee Institute. On the other hand, in South Carolina, in 1916, a sheriff's promise not to remove a threatened prisoner did not prevent the lynching. "The Lynching of Anthony Crawford," *Independent*, Vol. LXXXVIII, 456.

[17] Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island, Tennessee, Texas, Vermont, and Wisconsin.

[18] This is the form in Idaho, Indiana, Kentucky, Louisiana, Maine, Michigan, Mississippi, New Mexico, and Rhode Island.

[19] The same is true in Kentucky where it is sought to remove to the State Penitentiary.

six.[20] Perhaps, therefore, administrative custom and practice have sufficed in some states in the absence of law. Again, under the most cumbersome of all the statutes of this type the device has been satisfactorily used to prevent lynchings. In Florida the sheriff applies to the Governor, who designates a circuit judge to make the order for removal; yet all give of Florida's attempted lynchings for the period in question were prevented by removing the threatened person. The multiple official channels to be followed were either not the hindrance they would seem or they were disregarded.

The Southern Commission recommends that there should be a law providing "compulsory removal of prisoners in certain types of cases."[21] No existing law of this kind has been found. But a bill so providing was introduced in the North Carolina Senate in 1931. It reads:

"That it shall be the duty of every sheriff or other lawful officer having in his custody any person or persons charged with the commission of any crime, the punishment for which is death, or of an attempt to commit rape, to incarcerate or imprison any such person or persons in the State Penitentiary or in the common jail of any county other than that in which the offense is alleged to have been committed, to await the hearing and trial of the said prisoner or prisoners."[22]

Expenses are to be borne by the county in which the crime is alleged to have been committed. The bill was killed by the unfavorable report on it by the House Committee on Judiciary. Members of this Committee thought that the expense of administering the procedure embodied in the bill outweighed the obvious tendency it would have to reduce the danger of lynchings.[23] Whether

[20] Files of Department of Records, Tuskegee Institute.
[21] *Op. cit.*, 63.
[22] Senate Bill, number 31, Session 1931.
[23] This information was obtained through personal interviews held by the writer with the members of the House Committee.

one sympathizes with this reasoning or not, the fate of this bill is some indication of the probable argument that will be urged against any sort of automatic procedure made applicable to every case.

CHAPTER X

SPECIAL TERMS OF COURT

ARKANSAS ALONE makes specific provision for calling a special term of court to try certain inflammatory offenses likely to incite lynching.[1] But the device must be often used in other states under the general provisions for calling special terms. One indication of this is the volume of discussion and debate about this manner of preventing lynching. Honorable names appear on both sides of the controversy. Governors of West Virginia, North Carolina, and Alabama have argued for the special term of court as a remedy for lynching. The late Mr. Justice Brewer of the United States Supreme Court was also for it.[2] Judge Stephenson of North Carolina,[3] Judges John Woodward of New York and C. B. Lore of Delaware have spoken against it,[4] the latter two with warm eloquence:

1903. Judge Woodward. "If speed is, in fact, a desirable end to be accomplished in dealing with crime; if it is necessary as a concession to the spirit of savagery which survives beneath the veneer of civilized life, it is within the power of men . . . to provide the machinery by which men charged with crimes may be railroaded to their doom. They may, if they choose, so change the rules of evidence, and the methods of procedure that every malefactor may be accused, tried, convicted, and punished with neatness and dispatch amid the plaudits of a community which stands ready to accept almost anything so long as it is rapid. . . . The technical rules which are made use of by the guilty to delay the day of execution are the rules which guarantee to the inno-

[1] This statute is applied in Bettis v. State, 164 Ark. 17, 261 S. W. 46 (1924).
[2] C. H. Poe, "Lynching: A Southern View," *Atlantic Monthly*, XCIII, 155.
[3] *Op. cit.*, p. 99, note 7.
[4] *The Mob Spirit in America* (The Chautauqua Press, 1903), 56 and 63.

cent the preservation of their rights even in the face of popular clamor."

1903. Judge Lore. "Most emphatically we say the remedy is not in hasty and feverish action of courts of justice against the criminal whose offense is the exciting cause. Law has its highest function in throwing its shield of protection before the ignorant, the weak, and the helpless and was especially designed as a barrier against temporary madness. The more brutal the crime, the more degraded and ignorant the criminal, the more wide-spread and intense the public rage, the more imperative it is that courts of justice should secure a calm, just and fair hearing and that the guilt of the accused should be established. Otherwise innocent men may be punished for crimes they did not commit. . . ."

Judge Stephenson's theory is that the law cannot stoop so low as to yield to the dictates of a mob. This seems an unfortunate pursuit after a familiar will o'the wisp—"the majesty of the law." If special terms will actually result in preventing lynchings, the vaunted dignity of the law should not alone prevent the effectuation of such a desirable social consequence.[5] The real issues seem to be two: 1. Does the device prevent lynchings? 2. If so, does it result in unfair trials?

This question was included in the questionnaire:

Is it your observation or opinion that a special term of court to try a person threatened with lynching often averts a lynching?

202 answered; 101, affirmative; 67, negative; 34, qualified. Furthermore, it may be said that even so-called "legal lynchings" are evidence of the prevention of the conventional lynching. Two cases are on record where mobs in Delaware[6] and Mississippi[7] made fruitless requests for special terms of court before lynching Negro

[5] Compare the statement made by a Maryland judge in granting a change of venue: ". . . This court does not intend to have a mob dictate its action." See *Montgomery* (Ala.) *Advertiser*, December 28, 1913.

[6] "Anarchy in Delaware," *Outlook*, Vol. LXXIV, 543.

[7] Files of Department of Records, Tuskegee Institute.

rapists.[8] The *Montgomery Advertiser* of December 27, 1914, reports that only the pledge of the judge for a speedy trial for two Mexicans prevented a mob from lynching them. In 1901 in Rome, Georgia, a prisoner was ordered released by the judge who thought him innocent.[9] A summary trial to rest the soundness of the judge's conviction might have prevented the lynching that followed.

There is some evidence, however, tending to show that this device results in unfair trials. Out of 210 replies from the questionnaire directed to this matter 138 indicated a belief that such trials tended to be unfair to the accused. 42 thought them fair and 30 were undecided.

In 1911 there was the case in Alabama of a Negro rapist captured, indicted, tried, and sentenced within one week.[10] The same was accomplished in less than twenty-four hours in 1920.[11] The *Baltimore Herald* of May 31, 1922, reports the following case at Wayone, West Virginia: "On Sept. 6 last, Lattimer was arrested on the charge of rape committed against a seven year old girl. The same day he was arrested and within less than twenty-four hours had been indicted, tried, convicted, sentenced to be hanged and was on his way to the state penitentiary, according to the records of the case. Judge Lively in handing down an order for a new trial said: 'A judicial lynching is a graver and more startling crime than a lynching by an irresponsible rabble.' "

The Southern Commission notes a similar case in Texas:[12]

"The sheriff arrested a Negro accused of raping a school teacher at Millican, just southwest of Bryan, and escaped with him. The

[8] Mr. Chief Justice Lore of Delaware said of that case, "The judges of Delaware have no apology to make for not listening to suggestions of mob vengeance in the case of George White." See *The Mob Spirit in America, op. cit.*, 63.

[9] Files of Department of Records, Tuskegee Institute.

[10] *Montgomery Advertiser*, May 24, 1911.

[11] *Camden* (N. J.) *Telegram*, December 7, 1920.

[12] *Op. cit.*, 52.

mob followed. To prevent a lynching, a leading lawyer of Bryan promised mob leaders that if they would leave the Negro in the custody of the law he would see to it that there would be an immediate conviction and death sentence. The case was called late one afternoon. The mob, jamming the courthouse, demanded that it be completed that night. Court officials, fearing that a recess would result in a lynching, went on with the case. The evidence and argument were finished by ten o'clock. The jury retired and in a few minutes returned a verdict of guilty. The lawyers appointed by the court for the defendant considered whether to appeal the case, calling into their deliberations other lawyers and leading citizens. They decided not to appeal, fearing that to do so would only result in a lynching that night. So it was that the Negro's case was not appealed and within a month he was executed. The mob dictated every move in this trial, and doubtless the Negro would have been lynched had the court at any point failed to carry out promises made the mob by leading citizens."[13]

In the case of *Downer v. Dunaway*,[14] the facts as reported by Bryan, J., in reversing an order denying a petition for the writ of habeas corpus, were as follows:

"On May 17, 1931, so it is supposed, the crime of rape was committed upon a white woman near the city or town of Elberton in Elbert County. Appellant is a Negro man. On the 18th four Negroes other than appellant were arrested and held in jail as suspects, and on that day a mob of from 1,000 to 1,500 people surrounded the jail. Early on the 19th the mob had become so threatening that the officers placed those Negroes in automobiles and rushed them away to Athens to prevent them from being lynched. The mob became so enraged at this action that it pursued the officers and fired a number of shots into the automobiles carrying them and their prisoners. On the 19th appellant and another Negro named McCalla were also arrested and placed in

[13] For the effect of mob demonstrations on defendant's right to a fair trial under U. S. Const. Am. XIV, see Frank v. Mangum, 237 U. S. 309 (1915); Moore v. Dempsey, 261 U. S. 86 (1923); State v. Newsome, 195 N. C. 552, 143 S. E. 187 (1928). See also *Century* and *Decennial Digests*, Criminal Law, Sec. 591, and the celebrated "Scottsboro case," Powell v. Alabama, 77 L. ed. 78, 53 Sup. Ct. 55 (1932).

[14] 53 F. (2d) 586 (C. C. A. 5th, 1931); 1 F. Supp. 1001 (M. D. Ga., 1932).

jail at Elberton. A mob again gathered at the jail, overrunning the square in front of it and the courthouse, forced its way into the sheriff's quarters on the ground floor and up the stairs to the floor on which the jail was located, and attempted to break down the door leading into the cell where McCalla and appellant were imprisoned. By that time the Governor had ordered out the local National Guard troops, and they immediately gathered at the jail and began attempting to dispel the mob. As soon as it became dark the mob increased to not less than 1,500 people constantly threatened to break into the jail and lynch appellant and McCalla, and members of it did actually break into the sheriff's quarters and force their way up the stairs leading to the jail, where they were stopped by the firing of a machine gun. One member of the mob was injured and threats were made against the lives of the National Guardsmen who were manning the machine gun. For more than six hours the mob stormed and threatened, fired shots into the jail, smashed windows, threw dynamite, and threatened to blow up the jail. The arrival of more troops made it possible for the appellant and McCalla, disguised in National Guard uniforms, to be secretly placed in an automobile and taken to the Fulton County jail in Atlanta. On the 25th a special term of court was convened solely for the purpose of indicting and of trying the person alleged in the indictment to be guilty of the crime for which appellant was being held. A grand jury was immediately organized and on that day found an indictment against appellant for the rape. On the 26th he was tried, convicted as charged in the indictment, and sentenced to death. The trial began at 10 o'clock in the morning; the verdict was rendered at 10 o'clock that night, after the jury had been out about five minutes. The court at once pronounced sentence, and appellant was immediately taken charge of by troops and returned to the jail in Atlanta."

In *Dingus v. Commonwealth*[15] the trial was also specially called and speedy:

"It is shown that the homicide occurred during the night of June 23d; that there was much indignation in the locality at the outrageous crime; that the judge of the circuit court adjourned the

[15] 149 S. E. 414 (Va. 1929).

term in another county for two weeks, and called a special term of the circuit court of Russell County two days later, June 25th, for the purpose of trying this case, and began the trial July 2d. The case was submitted to the jury July 4th and the verdict returned July 5th."

The defendant was found guilty of murder in the first degree, but the appellate court found it necessary to reverse the case because of the following "astounding circumstance":

"It is shown by affidavits, which are not denied, that about 11 o'clock p.m. on July 4th, the jury having failed to agree, and while they were deliberating, a deputy sheriff (who had been sworn to keep them together, and not discuss the case with them, nor to permit any one else to do so), after the jury had retired for the night, and before they had agreed upon a verdict, told them that he was on the lookout for a mob to come to lynch the accused, Victor Dingus, together with four other accused persons connected with the robbery of the garage, and moreover that a 'phone message had been received from the mob that they wanted to know whether the jury had agreed upon a verdict, and he thought that he, the deputy sheriff, 'could hold the mob off until morning and give them a chance to agree,' and made other statements of like character which are set forth in detail in the affidavits. The following morning the jury returned the verdict."

Perhaps there are many orderly and fair summary trials which have prevented lynchings. Only one has been found reported by the press.[16] Others may have failed to reach print because of their poor news value. Certainly the most discouraging of all is the previously mentioned case from Waco, Texas, where a "legal lynching" was followed by an actual lynching.[17]

For the purpose of a model law, the change of venue provision could be coupled with a special term provision. The former, by removing the case from the local atmosphere of hostility and prejudice, would tend to relieve

[16] *Savannah* (Ga.) *Press*, June 28, 1923.
[17] *Ante*, p. 8.

summary trials of the unfairness that has characterized some of them.

Another feasible provision to bring about the same result is that for private trials. For a long time it has been popular to assign as a reason—and sometimes as an excuse—for the prevalence of lynching the idea that a woman should not be subjected to the humiliation of being the prosecutrix in a rape case. The suggested remedy was therefore a provision to clear the court room during the testimony of the raped woman.[18] This sentiment was crystallized in the North Carolina statute of 1907 which embodies the foregoing provision. Limiting this remedy to rape cases, however, is probably caused by an incorrect surmise as to the offenses causing lynchings. Alleged rape is given as the offense in only one-sixth of the cases. Perhaps it was a realization of this fact which led Judge Stephenson in 1917 to suggest that provision should be made for holding the whole of any criminal trial in private where the presiding judge thought it advisable.[19] To meet any constitutional requirements for public trial (as in North Carolina), a small delegation of citizens could be appointed to represent the public. The tendency of such a provision to promote fairness in summary trials would seem obvious.

The following addition to the proposed statute regulating change of venue is suggested:

Sec. 2. The judge having jurisdiction in the county designated as aforesaid shall order a special term of court to try the aforementioned case or cases; and at such trial the presiding judge may exclude all onlookers (except such number as is necessary to make the trial public in the sense required by the constitution).

[18] Somerville, "Some Coöperating Causes of Negro Lynching," *North American Review*, Vol. CLXXVII, 506; Poe, *op. cit.*, p. 105, note 2; Kilgo, *op. cit.*, p. 53, note 14; *Lynchings and What They Mean*, *op. cit.*, 51.

[19] *Op. cit.*, p. 99, note 7.

CHAPTER XI

ATTEMPTED LEGISLATION

State Legislation

But few of the multiplicity of suggestions offered to curb lynchings have reached the form of actual or attempted legislation. Indeed, some of them could not be accomplished through legislative fiat. For example, one commentator argues to teach men the love of animals and they will cease mobbing humans.[1] On the other hand, suggestions more capable of legislative enactment have fared no better with the lawmakers. A Mississippi clergyman would have the state lapse into a territorial status with the national government in control.[2] Somewhat similar was the recommendation of Pennsylvania's Governor Tener that the Legislature revoke the charter of the Borough of Coatesville for a lynching which occurred there.[3] An essayist and a State Governor have centered their suggestions around the oath of public officials—that it contain a declaration that they have not engaged in lynching and will not do so.[4] A magazine editor would abolish miscegenation laws.[5]

Governors have not infrequently recommended anti-mob enactments to their legislatures. Perhaps the outstanding examples are the recommendations of Governor James Stephen Hogg of Texas in 1893 and of Governor A. H. Longino of Mississippi in 1900. Governor Hogg spoke as follows:[6]

[1] S. R. Taber, "A Remedy for Lynching," *Nation*, Vol. LXXV, 478.

[2] "The Rev. Quincy Ewing on Lynching," *Independent*, Vol. VIII, 2059.

[3] *New York Age*, January 9, 1913.

[4] McSwain, "What Shall Be Done With Mobs?" *Central Law Journal*, Vol. LXVII, 375. And see *Baltimore* (Md.) *Herald Commonwealth*, January 22, 1927.

[5] "The Cause of Lynching," *Nation*, Vol. LXL, 463.

[6] C. W. Raines, ed., *Speeches and State Papers of James Stephen Hogg* (1905), 244-248.

"Gentlemen of the Senate and House of Representatives:

"It becomes my painful duty to emphasize to you the necessity of taking some steps to prevent mob violence in Texas. The recent terrible holocaust at Paris is but an illustration to what extent the mob spirit will go when the laws are inadequate to check it. Our Constitution is not so hide-bound that this condition must continue. It is in the power of the Legislature to adopt suitable measures to either prevent mob law or to bring to punishment all murderous executioners. No combination of men should ever be so strong in any government as to successfully override the law. They should never be so numerous as to make it impossible to bring them to trial for their crimes in the proper court.

"The question is difficult to deal with, but if your honorable bodies will enact suitable laws, and place the means in my hands, every person who takes part in a mob shall be brought to trial, or the strength of the machinery of justice shall be thoroughly tested in the effort. There is no higher obligation resting upon the legislative department than to have the constitutional guarantees for the protection of life, liberty and property respected and obeyed. If taxation becomes necessary to raise funds by which this may be done, I advise your honorable bodies to lay it on and make the people pay it to the full extent necessary."

The Governor then suggests that the Legislature enact a law providing for a penalty on the lynching county, ouster of delinquent peace officers, and civil liability on the perpetrators of lynchings.

Governor Longino's message of 1900 is equally eloquent:[7]

"Though it is true that the state is attracting attention because of the unequaled advantages it offers capital by the way of profits in manufacturing, yet, mark my prophecy, the state can never attain that magnificent degree of prosperity and grandeur of statehood, that of right should be hers, so long as public opinion permits the high-handed mob to treat the law with contempt, defy the courts and officers, and murder the people, without prosecution or pun-

[7] *Mississippi Senate Journal* (1900), 88 *et seq.*

ishment. It must be admitted that the work of the mob is not of infrequent occurrence in the state. Though this is a painful fact to admit, and one which for reasons of political policy it might be best unsaid, yet it is a fact about which, for the public good, every law-abiding citizen should be bold to speak in condemnation. The Constitution of the state says, 'The Governor shall see that the laws are faithfully executed.' But experience in all republics shows that the officers alone, however faithful in their efforts to uphold the majesty of the law, must fail in the full measure of success unless aided and sustained by a courageous public opinion. I hail then this opportunity as auspicious for an appeal to the legislature and people to stand by the incoming administration in the enforcement of the law and the suppression of mobs. . . . The honor of Mississippi and the good name of her Christian civilization demand the suppression of mob violence, which, in my judgment, is the most demoralizing, brutalizing, and ruinous species of lawlessness known to any brave and free people.

"The fault lies in a defective or inactive public sentiment on the subject, and hence the remedy must come from the people. The law has all the while been ample and rigorous in its penalties for crime; the judges have done their full duty toward the suppression of mobs, while appeals to public opinion in this behalf have been made by at least three of the great religious denominations of the state, respectively in conference, synod and convention, and by the press also as a rule; but all have failed to bring apparent beneficial results in that regard. Since, then, *moral persuasion* fails to sufficiently arouse the people to the danger and enormity of the evil, which is yearly growing, resort seems necessary to some stringent legal method to arouse and move public opinion to more vigorous assertion of its influence in the premises. I would therefore recommend to the legislature the wisdom and expediency of passing a law giving to the family of anyone who may be hereafter lynched a right to recover in the chancery court a fixed sum in damages against the county wherein the lynching occurred. Let the amount of said damages be made sufficiently large to engage public opposition to the payment thereof and let the right of recovery be predicated alone upon the fact that the lynching was done in the county where the recovery is sought.

It is not unusual that prisoners are taken by mobs from jail and from the custody of the officers, without resistance, and lynched. I recommend to the further serious consideration of the legislature the expediency of providing by law that the office of sheriff or constable shall become vacant, *ipso facto*, whenever any prisoner is taken from the jail or the lawful custody of such officer or his deputy and mobbed. In my judgment the time and occasion are here for some such stringent measure, and it is to be hoped the legislature will prove itself equal thereto."

Neither recommendation was successful,[8] and Governor Longino's seems to have had disastrous political consequences for him. He says:

"About thirty-two years ago I was inaugurated Governor of the State of Mississippi, and in my inaugural address to the Legislature I had the courage, or perhaps more aptly speaking the temerity, to recommend the passage of certain laws for the better protection and safeguard of the lives, liberty and property of the people, putting special emphasis on the importance of the better enforcement of the laws in the suppression of mob violence. I know of no more befitting reply to your letter than to enclose herewith a complete record copy of my said recommendation to the Legislature on the matter involved. I, therefore, enclose herewith a verbatim copy thereof for such use as you and your associates may want to make of it. The said message proved very unpopular, and about the only effect it has seemed to have had was to sound the political knell of its author, causing his subsequent defeat for United States Senator, Supreme Court Judge and for Governor a second time."[9]

The following table will show what types of legislation have been attempted in the several states—either by recommendation of the Governor or by introduction in the Legislature:

[8] Unless the Texas Act of 1897 and discussed *ante*, p. 27, be considered as passed in response to the Governor's message four years earlier.

[9] Letter to the writer, June 8, 1932.

State	Year	Rec. by Gov.	Intro. in Leg.	Type of Bill	Source of Information
Georgia.....	1916	?	Yes	Sheriff responsibility	*Atlanta Constitution* 5-6-16
Texas.....	1919	?	Yes	Constitutional Amendment disqualifying lyncher for suffrage	*San Antonio Express*, 2-5-19
Texas.....	1919	Yes	Yes	Conventional[10]	*Ibid.*, 7-29-21
Missouri.....	1919	?	Yes	Conventional	*Raleigh* (N. C.) *Independent* 2-22-19
Arkansas.....	1921	Yes	?	Sheriff responsibility	*Montgomery* (Ala.) *Advertiser* 1-28-21
Missouri.....	1921	Yes	Yes	Conventional	*St. Louis Argus* 7-8-21
South Carolina.	1927	?	Yes	Sheriff responsibility	*Chicago Whip* 3-26-27
South Carolina.	1927	Yes		Disqualify lynchers for citizenship and require non-lynching oath of officials	*Baltimore* (Md.) *Herald Commonwealth* 1-22-27
Georgia.....	1923	Yes	?	State constabulary	*Atlanta Georgian* 1-8-23
Georgia.....	1925	Yes	Yes	Sheriff responsibility	*Atlanta Constitution* 7-30-25
Mississippi....	1926	?	Yes	Sheriff responsibility	*Commercial Appeal* 2-22-26
Missouri.....	1927		Yes	Conventional	*Louisville* (Ky.) *News* 2-12-27
South Carolina.	1927	?	Yes	Conventional	*Baltimore* (Md.) *Herald Commonwealth* 2-1-27
Texas.....	1929	?	Yes	Use of Rangers to apprehend lynchers	*Savannah* (Ga.) *Tribune* 3-14-29
Tennessee.....	1931	?	Yes	Sheriff responsibility	*Montgomery* (Ala.) *Journal and Times* 2-23-31

A summary shows that some sort of anti-lynching legislation (in addition to that already existing) has been attempted at least in Georgia (3 times), Mississippi (once), Missouri (twice), South Carolina (3 times), Texas (3 times), Tennessee (once), and Arkansas (once). The provisions of the attempted legislation are in general not novel, nor do they seem to indicate anything of value for the purpose of drafting a model law. Haste is made, however, to state that such attempted legislation was in one case quite novel. It is reported that "Lynching, tar and feather parties, and rail riding would be legalized by a bill introduced in the North Dakota Senate. . . . "[11] The report, however, reassures readers: "There is little chance of the bill's passing, Senate leaders said."

[10] This term signifies that the proposed bill contained a majority of the provisions of anti-mob legislation in other states.

[11] *Mount Vernon* (N. Y.) *Argus*, January 13, 1927.

Federal Legislation

Attempts to curb lynchings by means of federal action began in the nineteenth century. In the post-war period a federal bill seems to have been introduced by North Carolina's Negro representative, White.[12] In 1899 the National Afro-American Council of the United States recommended a similar bill.[13] Then as an aftermath of large indemnities[14] paid to foreign governments because mobs in several states had lynched citizens of these countries, there was agitation for a federal law to protect aliens.[15]

Lynching of foreigners became more than a matter of indemnities when a threatened Mexican boycott was reported for the lynching of a Mexican in Texas,[16] and when German reprisals in the form of injury of American prisoners were reported threatened for the lynching of pro-Germans during the World War.[17]

At the 1921 meeting in San Francisco the American Bar Association resolved "that further (sic) legislation should be enacted by Congress to punish and prevent

[12] *Chicago Defender,* December 5, 1925.

[13] *Trenton* (N. J.) *True American,* August 19, 1899.

[14] See the following for statistics on these indemnities: Wells-Barnett, "Lynch-Law in America," *Arena,* Vol. XXIII, 15.

See also Julius Goebel, "The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars," *American Journal of International Law,* Vol. VIII, 851:

"The United States has always been ready to press claims for injuries to its own citizens abroad, and has been uniformly successful in obtaining acknowledgment of liability; on the other hand, the same government has invariably repudiated the principle of responsibility where similar claims have been made on it and in most cases an indemnity has been granted. . . . This is due, perhaps, to the traditional belief that responsibility must first be denied before an indemnity may be paid. Most of the indemnities paid by the United States have been in this fashion, and have been carefully classified as expressions of spontaneous liberality."

See to the same effect the following: Harmodis Arias, "The Non-Liability of States for Damages Suffered by Foreigners in the Course of a Riot, an Insurrection, or a Civil War," *American Journal of International Law,* Vol. VII, 724.

[15] See the suggestion for such a law by the then Italian Ambassador reported in *Birmingham* (Ala.) *Record-Herald,* December 25, 1901. See also: Watson, "Need of Federal Legislation in Respect to Mob Violence in Cases of Lynching of Aliens," *Yale Law Journal,* Vol. XXV, 561.

[16] "A Mexican Boycott," *Independent,* Vol. LXIX, 1111.

[17] "Lynching: An American Kultur?" *New Republic,* Vol. XIV, 311.

lynching and mob violence."[18] Five years earlier a mass meeting of citizens at Abbeville, South Carolina, went on record as favoring calling in Federal aid in the event that the state and county government were unable to suppress the local mob violence then prevalent.[19]

This sentiment was crystallized in 1920 by Congressman Dyer of Missouri. At this time he first introduced a federal anti-lynching bill designed to protect citizens as well as aliens. In 1922 the bill passed the House, but was defeated in the Senate by a filibuster of Southern Senators. It provides in brief for jurisdiction of the federal courts to punish county officers and lynchers, and for the forfeiture to the United States of $10,000 by any county which is the scene of a lynching.[20]

One of the strongest arguments urged against the Dyer Bill was its alleged unconstitutionality. The arguments on both sides of this question are set forth in the report of the committee hearings and a series of articles.[21]

Professional opinion in the South seems whole-heartedly and overwhelmingly opposed to Federal legislation dealing with lynching in this way. The following request was made in the questionnaire:

Please state your approval or disapproval of the proposed Dyer Bill making lynching a Federal crime, with a $10,000 penalty on the offending county.

[18] "Lynching, a National Evil," *Outlook*, Vol. CXXXII, 596.

[19] Roy Nash, "The Lynching of Anthony Crawford," *Independent*, Vol. LXXXVIII, 456.

[20] The full text of the bill may be found in House Rep. 71, 68 Cong., First Session, 16.

[21] See L. C. and G. E. Dyer, "The Constitutionality of a Federal Anti-Lynching Bill," *St. Louis Law Review*, Vol. XIII, 186; Leon E. Mertins, *Has the United States the Power to Prosecute "Lynching" as a Federal Crime Without An Amendment to the Constitution* (New York, 1921); "Lynching and Federal Law," *Chautauquan*, Vol. XL, 408.

A point of practical significance which has not been capitalized is the following: the present Chief Justice was a member of a National Conference which, in 1919 passed a unanimous resolution to the effect that lynching be made a federal crime punishable by the United States Courts. See "New Phases of the Fight Against Lynching," *Current Opinion*, Vol. LXVII, 45.

Out of 213 responses, 194 expressed emphatic disapproval; only 14, approval; and 7 were qualified.

No way is perceived to estimate the probable efficacy of federal legislation in this field. Within their jurisdictional limits the federal courts have been able to take so little action that we have no experience on which to base a sound judgment. There is one case on record where a federal court has disbarred an attorney for participating in a lynching.[22] Record has been found of eight civil suits for damages growing out of actual or attempted lynchings, with jurisdiction based on diversity of citizenship.[23] At least two of these were successful.[24] Then there are two instances in which federal crimes resulting in prosecution have been discovered in the series of events leading up to lynchings. In Abbeville, South Carolina, a special delivery boy was hindered by the mob from delivering his mail,[25] and in Chickasha, Oklahoma, the mob destroyed government property, a truck of the National Guard unit on duty in the area.[26]

In any event, the wholesale opposition of Southern lawyers and judges to the Dyer Bill makes the possibility of passing such an enactment a very remote one.

[22] In re Wall, 13 Fed. 814 (C. C. S. D. Fla. 1882).

[23] See the following: *Savannah* (Ga.) *News,* September 14, 1899; *Montgomery* (Ala.) *Advertiser,* February 4, 1912, and May 21, 1914; *Atlanta Constitution,* July 23, 1922; *Chicago Whip,* November 3, 1923; *Pittsburgh Courier,* June 15, 1929.

[24] See *ante,* p. 78.

[25] *Greenville* (S. C.) *News,* December 14, 1916.

[26] Raper, *The Tragedy of Lynching,* Chap. XVIII.

CHAPTER XII

PROPOSALS FOR ADDITIONAL LEGISLATION

In Georgia in 1922 Judge Blanton Fortson of Athens granted a temporary injunction restraining certain named persons from doing further mob violence to Asbury McCluskey, a Negro of Statham, Barrow County.[1] This salutary repudiation of the loose general doctrine that equity will not aid the enforcement of the criminal law opens up the significant possibility of using a branch of the judicial machine untried in connection with the lynching problem. What effect can the injunction have in preventing mob violence in the form of lynching?

It has been noted[2] that for an estimated third of the lynchings (those occurring before the lynched person reached the custody of the law) practically no so-called prophylactic measures have been devised. And to the same problem some aspects of the existing body of punitive measures are inapplicable. Injunctive relief would fill the gap. If persons about to engage in a man-hunt were enjoined, not from searching for and capturing the desired person, *but from lynching or abusing him or any other person*[3] the deterrent effect of fear of punishment

[1] *Atlanta Constitution*, May 20, 1922.

[2] *Ante*, p. 36.

[3] The advisability of protecting "any other person" is indicated by the following account of disorders at Emelle, Ala., in 1930: "The man-hunt continued through the night of the fifth. The homes of Negroes were searched and all types of firearms were taken—and never returned. It is reported that a Negro still was broken up, the whiskey consumed, and that the owner of the still was robbed of $500.

"On the night of the fifth, Winston Jones, Negro, received a fatal shot at Narkeeta, Mississippi, just across the state line. The newspapers reported that he was killed by Clarence Bush, cousin of Guy Bush, the famed Chicago baseball player, and that Bush said he shot the Negro because, when asked to halt, the latter had fired on him, wounding him in the arm. Jones was sought by Tuscaloosa authorities for the recent shooting of a Negro woman there.

"A second casualty on the night of the fifth was that of a Negro woman,

for contempt in violating the injunction might tend to prevent the threatened lynching.[4] If the threatened lynching is of a person already arrested, the injunction might again be used with the same effect. This use of the injunction would be unnecessary, however, if the contempt power were made broad enough to cover such cases.[5] But the chief want is, as mentioned, protection against lynching of a person not yet arrested. Provisions for removal of the prisoner, extra guards, etc., provide (theoretically, at least) fairly adequate protection for an arrested person.

The additional feature of using the injunction as making possible another form of punishment for lynching is not to be overlooked. The punishment for contempt is summary. The necessity for grand and petty juries is avoided. Mention has been made with quantitative data of the retarding effect of the grand jury on successful lynching prosecutions.[6] That the petty jury is a barrier of equal proportions is a commonplace.[7]

The two most obvious practical conditions on which the efficacy of the injunctive process will depend are the

Viola Dial, who was in a car with her husband and three other men. Manhunters ordered the car to stop; when it did not they fired upon it, killing the woman; the men jumped from the car and escaped. Some think the husband in fright had not understood the command to halt. This was the sixth and last casualty of the Emelle disorders." Raper, *The Tragedy of Lynching*, 63.

[4] The importance of imposing some legal hazard on a mob in its formative stage is accentuated by the apparent possibility of changing the collective purpose from an illegal to a legal one. A case reported by the *Charlotte* (N. C.) *Observer*, September 11, 1931, is illustrative: "Leaders of a mob of Livingston parish citizens who attempted to lynch Ellis Smith, young Negro charged with attempted criminal assault of Mrs. Monroe Hatchell several weeks ago, have been sworn in as members of a posse comitatus to protect Smith when he is returned to the parish for sentence, Sheriff Louis F. Harris said today."

[5] See *post*, p. 126 *et seq.*

[6] *Ante*, p. 78.

[7] See press comments on trials for lynching, e.g, the following:

1. *Atlanta* (Ga.) *Constitution*, April 14, 1922. "The men were convicted after a joint trial of 'shooting at another' (indictments were for murder) the jury recommending that misdemeanor punishment be imposed."

2. *Atlanta Journal*, February 7, 1927. "The jury deliberated for more than 28 hours and were divided, it is said, 10 for conviction and 2 for acquittal."

3. *Chattanooga* (Tenn.) *Times*, July 27, 1902. "The court exhausted a venire of 350 and found every man in the lot disqualified—probably having themselves aided in the affair."

time-element and the size of the mob. And these are variant elements in each individual case. Cases have been found when the lynching followed one-half an hour[8] and again two hours after the commission of the crime.[9] Then there are cases at the other extreme involving a time-lapse of weeks and months. The number of individuals involved ranges all the way from six persons[10] to 10,000.[11] Authoritative data exist on these variable elements in the 1930 lynchings through the Commission's Case Studies.[12] The time-element in these cases is analyzed in the following table:

Place	*Time of Crime*	*Time of Lynching*
1. Ocilla, Ga.	Jan. 30—Afternoon	Feb. 1—Daybreak
2. Rosedale, Miss.	April 22—Afternoon	April 23—Mid-Forenoon
3. Honey Grove, Tex.	May 16—1.00 P. M.	May 16—4.00 P. M.
4. Chickasha, Okla.	May 30—4.30 P. M.	May 31—3.30 A. M.
5. Union, South Carolina	June 20—Afternoon	June 21—Afternoon
6. Emelle, Ala.	July 4—4.00 P. M.	July 4—Evening
7. Marion, Ind.	Aug. 6—Night	Aug. 7—Morning(double lynching)
8. Darien, Ga.	Sept. 7—Night	Sept. 8—Mid-Morning
9. Thomasville, Ga.	Sept. 24—Afternoon	Sept. 25—Morning
10. Thomas County, Ga.	No crime alleged	Sept. 28—Night
11. Bryan, Texas	June 17—Afternoon	June 19—Forenoon
12. Sherman, Texas	May 3—Forenoon	May 9—Evening
13. Maryville, Mo.	Dec. 16—Afternoon	Jan. 12, 1931—Morning
14. Tarboro, N. C.	July 18—Afternoon	Aug. 20
15. Scooba, Miss.	Sept. 6—Night	Sept. 10–Morning(double lynching)
16. Cartersville, Ga.	Sept. 16—Morning	Oct. 1—Morning
17. Walhalla, S. C.	April 20—Forenoon	April 23—Midnight
18. Ailey, Ga.	No crime alleged	July 29

In only two of these cases would it have been clearly impossible to secure an injunction—those of Ailey and Thomas County, Georgia. These were secret killings by small bands of men, and there were no public preliminary manifestations. In all of the other cases there were manifestations of mobbism shortly following the crimes. The

[8] At Elkins, West Virginia. See *Birmingham* (Ala.) *Record-Herald*, July 22, 1901.

[9] At Fayette, Missouri. See *The American*, March 30, 1914.

[10] At Thorndale, Texas, in 1911. See Files of Department of Records, Tuskegee Institute.

[11] "Lynching," *Outlook*, Vol. XCIII, 637.

[12] See Files of Commission on Interracial Coöperation.

danger was obvious in each case, but circumstances which would make it easy or difficult to get an injunction varied. In the first nine cases in the table, the time-lapse between crime and lynching is short. But in two of these this would perhaps have not been an insuperable barrier. Union, South Carolina, is a county seat. Perhaps a judge with equity jurisdiction was therefore readily available. Certainly this was true in Thomasville, Georgia, where the sheriff early enlisted the aid of a judge in an attempt to dissuade the mob. In the remaining cases there was clearly enough time. In Cartersville and Sherman the cases had come to trial, and in Maryville the deceased met his death while *en route* for trial. In Walhalla and Tarboro there had been preliminary hearings and in Scooba officers were carrying the deceased to such a hearing.

In the 1930 cases the size of the mobs ranged from five to fifteen thousand. The number was twelve or less in three cases (Thomas County, Bryan, Ailey); between fifty and a hundred in two (Scooba and Cartersville). In the remainder the mob members numbered in the hundreds, except in Sherman and Marion where the numbers mounted into the thousands. Of course, as the crowd swells, the difficulties of using the injunction effectively increase.

A further practical consideration is the intelligence level of the mob. Probably persons of some mental equipment would be more susceptible of deterrence by injunction than an ignorant rabble would be. In 1930 the constituency of the mobs was of the latter sort:

"Only one of the known lynchers was a college-trained man—a dentist, released but a few years ago from the State Insane Asylum. Few of those identified were even high-school graduates, though a few high school students took an especially active part in the preliminaries at Sherman and at Marion. In the rural counties the older men seemed to have initiated the lynchings. About half the known lynchers were not identified with any church,

with many others inactive as to contributions and attendance. Many of the lynchers were that type of person who reads but little, is identified with but few or no organizations, who, in short, is outside the reach of the modern agencies affecting group morals and public opinion."[13]

But this is not always the case. In Georgia in 1922 indictments for a lynching in Monroe County were returned against five persons—a grocer, soft-drink dealer, mechanic, loan agent, insurance salesman, and hotel clerk.[14] In South Carolina in 1911 a State legislator and his son are charged with having led a lynching mob.[15]

Injunctive relief cannot be offered as a panacea but it can be proposed as a cumulative remedy of probable efficacy in a substantial number of cases.

The questionnaire vote, however, by a large majority, is against this proposed use of the injunction. This question was asked:

Investigation shows that in many lynchings there would have been time enough, and the leaders were definitely enough known to have secured a temporary injunction restraining them and all others from lynching the threatened person. Do you think this would be a desirable remedy?

218 answers were received—44, affirmative; 149, negative; 25, qualified.

Perhaps the novelty of the proposal accounts in some measure for the opposition to it. "There is too much hysteria on the subject," says a Georgia lawyer, " . . . equity has no such jurisdiction and I doubt the wisdom of revolutionary changes made to satisfy doctrinnaires." Many others prefer to have equity retain its traditional position of aloofness from the criminal law.

By far the greatest objection, however, is that the proposal lacks practicability. "Useless procedure," says one lawyer, " . . . if the sheriff cannot prevent lynching, he

[13] *Lynchings and What They Mean*, 37.
[14] *Atlanta Constitution*, August 31, 1922.
[15] "Lynchers Triumphant," *Nation*, Vol. XCIII, 386.

couldn't prevent violation of injunction." Another believes that "there is no political judge who would grant the order." A third says:

"I think it an idle remedy. The same officers who would have to act to make such a law effective could prevent the lynching anyway if they would do their duty. Such a law impresses me somewhat like catching the Capone gang by the income tax route. The procedure is cumbersome and can easily be forestalled. Then besides the political sheriff couldn't *possibly* find the named parties to be served."

To another "this would be an amusing and little used statute as long as we have peace officers and judges elected by the people." Others think that when circumstances would permit the issuance of an injunction, more effective means of prevention exist. Says one: "If there is time enough for injunction, there is time enough for machine guns—the latter more effective." "Why not arrest?" asks another, " . . . evidence which would warrant an injunction would warrant a commitment without bail, if so provided." The same idea is expressed in the following response: "If leaders are known, they should not be enjoined, but arrested, placed in jail, and then charged with attempting to cause a lynching."

Finally some who replied doubt that an injunction would create any mental hazard in the minds of prospective lynchers. These answers typify this attitude: 1. "A person who would participate in a lynching would take no notice of a restraining order." 2. "If they do not fear indictment for murder, they would not fear court order in restraint."

It is believed, that these objections can be answered. If, in legislation providing for the automatic removal of the sheriff, his reinstatement is made to depend in part on a showing that he secured an injunction or made a reasonable attempt to do so, with a similar provision as to the enforcement of the writ, then he will be under an irresist-

ible stimulus to get the order and enforce it. Provision can be made for the issuance of the writ as a matter of course on the application of the sheriff.

As to whether other measures would not be more practicable when circumstances are such that an injunction could be got, it is sufficient to say that the remedy proposed is cumulative, not exclusive. This is noted in at least one affirmative answer to the question propounded:

"As ancillary to damages against counties and individuals, and as cumulative to criminal punishment of members of mob, it would serve to deter some from thereafter acting because of the publicity, but in most cases, there is not time for this."

Finally the argument that the injunction would not create a sufficient mental hazard to forestall the threatened lynching presupposes that this is the only purpose of the proposal. It has been noted that the addition of a new form and procedure of punishment is supplied. Even if it were a foregone conclusion that the injunction would be violated, the way is open for summary punishment without the intervention of a jury. Indeed this is an indirect mode of punishment, somewhat analagous to "the income tax route" against "the Capone gang." But certainly it is better than no punishment at all.

One reply from Arkansas indicates a belief that such legislation in that state would be unconstitutional, for the reason that "in Arkansas the jurisdiction of equity is fixed by the Constitution and cannot be enlarged or diminished by legislative act." It would seem possible, however, to circumvent this obstacle by conferring the power on a law judge and by considering the remedy in the nature of an extraordinary legal writ.

In 1906 in Chattanooga, Tennessee, a Negro was convicted of rape in the state court. White defense lawyers refused to appeal. They were replaced with Negro lawyers who took an appeal to the United States Supreme

Court with stay of execution. Pending the appeal, the Negro was lynched and the lynchers were held in contempt of the Supreme Court.[16] In 1901, in Alabama, Judge Enson sentenced several witnesses for contempt in refusing to testify in a lynching investigation.[17] These cases indicate the possibility of a wider use of the contempt power in the judicial handling of the problem of lynching.[18]

The exercise of this power would provide an added means of punishing would-be and actual lynchers. The necessity for grand and petty jury is obviated. The proceeding is summary and void of technicalities. Indeed, even though local sentiment would thwart any attempt at criminal prosecution, the contempt-remedy is so non-dependent on it that, at least in the case of actual contempt, only a courageous judge would be needed. And punishment as for contempt is so clearly distinct from prosecution for the crime or crimes involved in a lynching that no question of double jeopardy would seem to be raised.

No statutory broadening of the contempt-power would seem necessary to cover cases which not infrequently occur —the lynching of persons during trial. In 1912 at Shelbyville, Tennessee, three persons were shot by a mob[19] during their preliminary hearing. In Mississippi in 1922 a prisoner was seized in the court room and lynched.[20] In

[16] United States v. Shipp, 214 U. S. 386 (1909); "An Insult to the Nation," *Outlook*, Vol. LXXXII, 721; "Lynchings and Criminal Procedure," *Outlook*, Vol. LXXXIII, 301.

[17] *Birmingham Record-Herald*, August 23, 1901. Compare the following from *Atlanta* (Ga.) *Constitution*, December 22, 1914: "The jailer admitted he knew the name of another (mobster) but refused to state it. Threats of the Attorney General to send (him) to jail did not bring the desired information."

[18] At least one editorial writer has advocated this: "To imprison lynchers for contempt of court is much simpler and quicker than to put them through the difficult process of prosecution by sympathetic district attorneys and conviction by juries of their neighbors. Let every court summon lynchers and punish them just as if the prisoner were taken out from under the nose of the judge to the rope or torch, and the lawless will think twice before they outrage the process of law," *N. Y. Press* quoted in Dr. Frank, *Negrolana, op. cit.*, 219.

[19] Files of Department of Records, Tuskegee Institute.

[20] *Ibid.*

the same year and state a defendant whose execution had been stayed by an appeal to the Supreme Court was lynched.[21] In none of these cases was the remedy used, though it was clearly applicable.

The same is true of cases where an unsuccessful attempt has been made to lynch a person on trial. In *State v. Newsome*,[22] for example, the following occurrence took place as described by the trial judge:

"While Deputy Sheriff Kornegay was on the witness stand, and while the courtroom was crowded to its full capacity, the father of the deceased girl, and her uncle, William Tedder, approached the prisoner, and before any one was aware of his intentions, seized the prisoner by the collar of his coat, and attempted to drag him from the bar and into the main body of the courtroom, toward the front door. A number of persons in the audience shouted 'Take him!' and a part of the crowd attempted to assist the two Tedders but the greater part of the audience either remained standing or attempted to get out of the doors. Sheriff Grant rushed into the crowd, seized the prisoner, wrested him away from William Tedder, and took him into the jury room, immediately to the rear of the witness stand. He left the prisoner in the jury room with a deputy, returned to the courtroom, and, as the audience was in somewhat of a turmoil, fired his pistol at the ceiling in order to quell the tumult. The court ordered the sheriff and his deputies to stand by and prevent any further demonstration, and stated to the audience that any further attempt upon the life of the prisoner would be met by force. The local military company had been directed by the adjutant general to hold itself in readiness in case of an emergency, and it had been agreed that the company should assemble in the armory and be in full uniform by 9:30 o'clock on Sunday morning when the court assembled to continue the trial. The signal for help was to ring the courthouse bell, which was done; and in a few minutes soldiers came into the courtroom, some six or seven of them, and formed a cordon about the prisoner during the remainder of the trial. There was no further demonstration, and the trial pro-

[21] *Atlanta* (Ga.) *Constitution*, November 24, 1920.
[22] 195 N. C. 552, 143 S. E. 187 (1928).

ceeded in an orderly manner. During the foregoing demonstration, the jury sat in perfect order, and did not appear to be at all disturbed; and the court charged them, as appears from the case, not to be influenced by what had occurred. This memorandum is made by the court of its own motion, for the information of the Supreme Court, as no exception was taken by the prisoner at the time. The foregoing is settled as case on appeal in the case of State v. Larry Newsome, counsel having disagreed. This 2d day of January, 1928."

One question on appeal was whether the trial judge should have declared a mistrial *ex mero motu*. Four judges agreed to a reversal on other grounds but divided evenly on the question of whether the facts above recited would alone call for a reversal. One dissented. Mr. Justice Brogden in concurring with the majority collects many cases where attempts have been made to mob persons on trial:

"In Collier v. State, 115 Ga. 803, 42 S. E. 226, the defendant was tried and convicted for rape. While the prosecutrix was upon the witness stand, she grew excited and turned to the defendant, saying, 'you know you are guilty.' Thereupon a large portion of the audience became very much excited, and came pouring over the benches in an excited manner to where the defendant was. The judge commanded the crowd to sit down. After the jury had retired to the jury room to consider their verdict, there was a crowd of 50 to 75 people in and around the courthouse and in the yard of the courthouse who were acting in a very boisterous manner."

"So in Woolfolk v. State, 81 Ga. 551, 8 S. E. 724, during the progress of the trial, some one in the audience cried out 'Hang him! Hang him!' All the jurors made affidavits that these things had no influence upon their minds."

"In Faulkner v. State, 80 Tex. Cr. R. 341, 189 S. W. 1077, the defendant was indicted and convicted of rape. When the prosecutrix was testifying, she pointed out the defendant. Immediately a brother of the prosecutrix, who was sitting near the bar, arose with the exclamation, 'Lynch the son of a bitch! he is mine,' and

came walking toward the defendant. A deputy sheriff took him before he got to the defendant. The sheriff partly drew his pistol, commanding the brother of the prosecutrix to stop, and he was taken from the courtroom. The presiding judge said nothing, and the offending party was neither fined nor otherwise reprimanded for his conduct. While the jury was deliberating, there was a large crowd in the courtroom. The judge ascertained that the verdict of the jury would be life imprisonment, and was afraid to bring the jury out of the jury room until the crowd dispersed, which was sometime after midnight."

It is difficult to perceive any excuse for not punishing the perpetrators of such disturbances for contempt of court. Mr. Justice Brogden, while not arguing directly on this point, pens an eloquent appeal for the preservation of the dignity of courts in such cases:

"Much is being said and written about law enforcement. But, if the law cannot be enforced within the very tribunals of justice, so as to preserve inviolate the person of litigants from frenzied force . . . well may the court criers throughout the state in opening and adjourning the sittings shout in thunder tones, 'God save the State and this honorable court.' "

More judicial courage of the type exhibited by Mr. Justice Lacke is needed. He was presiding over a circuit court in the Southern District of Florida in 1882. As he was leaving the courthouse for dinner on a certain day, a prisoner was brought into the yard in custody of officers. Upon his return in the afternoon, the dead body of the same person hung in a tree directly in front of the courthouse door. Word came to the judge that an attorney, J. B. Wall, had participated in the lynching. Thereupon, the judge, on his own motion, instituted a summary proceeding to disbar Wall.[23] The latter demurred to the action of the court, because "*First,* no complaint under oath has been filed; and, *secondly,* because he has been charged with an indictable offense, of which this court has

[23] In re Wall, 13 Fed. 814 (C. C. S. D. Fla. 1882).

no jurisdiction before indictment and conviction," and denied his participation in the lynching. The court hurdled Wall's technical objections and got to the heart of the matter:

"In this action against Mr. Wall this court unquestionably has jurisdiction, but in a criminal prosecution it has none. Can it be argued that it is then compelled to wait in its action for the movement of a foreign tribunal, and that it is helpless as against the local inactivity, neglect, or prejudice of the prosecuting officers or jurors of any one county of the district? Such a view of the law cannot be accepted, and so much of the answer as demurs to the action must be overruled. The only question remaining to decide is whether a person guilty of presence and participation, under the circumstances, and on such an occasion, shall retain his position as attorney of this court or not."

The court found that the evidence showed defendant's participation and that such participation was ground for disbarment:

"Lynch law, stripped of all the sophistries with which it is surrounded by the ingenuity of its supporters, is, in its plain, naked self, not only a violation of law, but an attack upon, and a flaunting insult to, its courts and officers. . . . Nothing, in my opinion, could seem more abhorrent to a lawyer, with such a respect for law as his profession should imply, than the engaging in any such lawless outrage. . . . This court cannot shield itself behind a defense of minor technicalities, either of allegation or evidence, without proving recreant to the trusts reposed in it, and it is ordered that J. B. Wall be prohibited from practicing at the bar of this court until further order herein."

Although no statute is needed to give courts the power to punish for *actual* contempts, yet such an enactment might have the merit of calling their duty to mind. On the other hand, a statutory broadening of the concept of *constructive* contempt would probably be necessary in order to make this remedy available in certain types of cases where it seems desirable that it should apply.

These are of the following types: lynching immediately after judicial acquittal;[24] lynching of defendant out on bond;[25] lynching of a defendant on day previous to date set for trial;[26] lynching after judicial sentence.[27]

It is true that in these cases the contempt is not in the presence of the court and witnesses to it would be necessary. For this purpose the sheriff can be stimulated to act by imposing as a condition for his reinstatement a showing that he has made a reasonable attempt to have the perpetrators punished for contempt.

A question on the contempt remedy for lynchings was included in the questionnaire:

Would it be desirable to provide by statute that, wherever a prisoner has been taken in custody by the sheriff, or other peace officer, that such officer shall be deemed to be acting as an officer of the local court of general criminal jurisdiction, whether or not any actual criminal proceedings have as yet been instituted and that any interference with such custody shall be punishable summarily as contempt?

Only 105 answers were received to this question—67, affirmative; 30, negative; 8, qualified.

It should be noted, however, that the present proposal is broader than that embodied in the question in that it would cover the case of a person recently acquitted by the court contemned.[28]

The following is suggested:

1. Any county commissioner, sheriff, mayor, chief of police or prosecuting attorney, or any three citizens, may, in the name

[24] At Port Arthur, Texas. *Lynchburg* (Va.) *News*, February 13, 1900.

[25] At Beaumont, Texas, 1913. Files of Department of Records, Tuskegee Institute.

[26] At Morgan, Ga. *Montgomery* (Ala.) *Advertiser*, August 16, 1913.

[27] At Waco, Texas, 1916, Files of Department of Records, Tuskegee Institute; at Poplarville, Mississippi, 1918, *ibid.;* at Fayetteville, West Va., 1920, *ibid.;* at Columbia, Mississippi, 1919, *ibid.;* at Bowling Green, Missouri, 1921, *ibid.* For similar cases at Huntsville, Alabama, and Statesboro, Georgia, see *Current Literature*, Vol. XXXVII, 294.

[28] The questionnaire requested off-hand opinions on the constitutionality of the injunction and contempt proposals. The answers were in favor of the constitutionality of the proposals by 118 to 53 and 111 to 45 respectively.

of the State of ————, apply to any judge of the ———— Court for a restraining order or temporary injunction to prevent any lynching or attempted lynching. Upon the filing of such an application, the judge shall proceed forthwith to a consideration of the grounds set forth in the complaint. If it appears that a lynching or an attempted lynching is contemplated, planned or likely to take place, the judge shall issue a restraining order or temporary injunction in such terms and against such persons as will in his discretion be most likely to prevent the occurrence.

2. Any participation in or procurement of the lynching or attempted lynching of any person in custody or out on bond, or of any person acquitted of any criminal charge within the preceding 30 days, or of any person on trial for any crime, shall constitute a contempt of the court having general criminal jurisdiction in the county where the victim was in custody, admitted to bail, or on trial, or where the acquittal took place, as the case may be.

3. Any violation of any restraining order or any injunction authorized by this act, and any contempt of court defined by this act, may be punished by a fine of.....or by imprisonment in.....not less than.....nor more than....., or by both such fine and imprisonment.

APPENDIX A

PROPOSED MODEL ACT

1. Lynching is the killing or aggravated injury of a human being by the act or procurement of a mob (with appropriate penalties).

2. The county in which a lynching occurs shall be liable to each lynched person or his estate for a penal sum of not less than $2,000 nor more than $10,000, to be recovered in a civil action in any state court. The court shall direct a verdict in favor of the plaintiff if the only reasonable inference to be drawn from the evidence is that death or injury resulted from mob violence. Otherwise the case shall be submitted to the jury. In the event of a recovery, the defendant county or city shall be directed by the court to pay a reasonable amount as fees for the plaintiff's counsel.

3. The amount recovered shall be included in the next tax levy. Failure on the part of the proper officer to do so, or failure on the part of the proper officer to pay the judgment shall place the officer or officers so failing in contempt of the court issuing the judgment.

4. The amount recovered shall, if the case be one of death by mob violence, be exempt from all claims by creditors of the deceased.

5. Each county through which the mob shall have passed shall be liable as herein provided. But a recovery against one county shall bar a recovery against all the others. All said other counties, however, shall be liable to the county against which the judgment is recovered in a suit for contribution to share equally the expense both of the judgment and the costs.

6. In addition to the ordinary civil and criminal liability to which they are subject, all members of the mob shall be jointly and severally liable to each and all of the counties which shall have had to pay a judgment or judgments under the provisions of this act.

7. The Governor shall remove the sheriff and declare his office vacant, whenever any person in the county of said sheriff is lynched, regardless of whether such person had been arrested. If a lynching has been attempted, but not consummated, the Governor shall remove the sheriff only on a showing that said sheriff did not do all in his power to suppress the attempted lynching.

8. The Governor shall remove any other peace officer and declare his office vacant, when any person shall have been taken from the custody of said peace officer and lynched. If a lynching of a person in the custody of a peace officer has been attempted but not consummated, the Governor shall remove such peace officer only on a showing that he did not do all in his power to suppress the attempted lynching.

9. The sheriff or other peace officer so removed, unless he be reinstated as hereinafter set forth, shall thereafter be forever ineligible to hold any public office in this State. If the said sheriff or other peace officer resigns after a lynching or attempted lynching before the Governor has had a reasonable opportunity to discharge the duty imposed upon him herein, then said sheriff or other peace officer shall be likewise forever ineligible to hold any public office in this State. The Governor, however, may restore the eligibility of such officer so resigning, if, on proper petition, it is shown that said officer had done all in his power to prevent the lynching.

10. If, on proper petition, the Governor finds that the sheriff or other peace officer so removed has done all in his power to prevent the lynching, the Governor may reinstate the officer. Provided, failure to employ or to make a reasonable attempt to employ the following measures shall be cogent evidence that the said sheriff or other peace officer has not done all in his power to prevent the lynching: secure guards, remove the prisoner to an adjoining county, summon the aid of bystanders, procure military aid, arm the prisoner or person threatened with lynching, use riot arms, secure an injunction against the lynching, and institute proceedings for contempt of court against the perpetrators of the lynching of a person who has been arrested.

11. No sheriff or other peace officer, however, shall be removed under the provisions of this act where military forces have assumed command with authority superseding that of said sheriff

or other peace officer, by reason of any lynching or attempted lynching occurring during such military authority.

12. The sheriff or any other peace officer and their bondsmen shall be liable to any lynched person or to his estate for such damages as have been sustained, where such sheriff or other peace officer has not done all in his power to prevent the lynching.

13. All prosecutions under this act may be by indictment or by information filed by the local prosecuting attorney or the State Attorney General.

OR

13. Whenever a lynching or attempted lynching shall occur the justices of the highest appellate court of this State, or a majority of them, shall draw up a list of 75 eligible jurors from which the grand and petit juries to investigate and try the case shall be chosen, said list to be made up from the jury lists of as many counties as said appellate court sees fit. The Chief Justice shall immediately convene the court for this purpose, if it is not then sitting.

14. The Attorney General shall take charge of all prosecutions under this act, and his authority shall supersede that of the local prosecuting attorney.

15. The Governor shall have the power to dispatch such military units to any area where a lynching is threatened as he may think fit. No request from any local officers shall be necessary to enable the Governor so to act.

16. The authority of the commanding officer so dispatched by the Governor shall supersede that of all local peace officers in the preservation of the peace against all disorders arising out of the lynching or attempted lynching, irrespective of whether such local officers have made any request for military aid.

17. The commanding officer and all subordinate commissioned and non-commissioned officers of said military forces shall be subject to removal by the Governor, on a showing that they did not do all in their power to prevent a lynching or suppress an attempted lynching, and shall be, unless reinstated by him, forever ineligible to hold any public office in this State.

18. No one of the following crimes shall be tried in the county in which it is alleged to have been committed, but shall be

tried in any other county to be designated by the judge before whom the case would have normally come for trial:

1. Homicide where the deceased was a white man and the accused a Negro.
2. Rape or attempted rape where the prosecutrix is a white woman and the accused a Negro.
3. Felonious assault where the person allegedly assaulted is white and the accused a Negro.

19. The judge having jurisdiction in the county designated as aforesaid shall order a special term of court to try the aforementioned case or cases; and at such trial the presiding judge may exclude all onlookers, (except such number as is necessary to make the trial public in the sense required by the constitution).

20. In all investigations and trials growing out of a lynching or attempted lynching no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, or tried, upon the ground that his answer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself; but no discovery made by such witness upon any such examination shall be used against him in any court in any penal or criminal prosecution, and he shall, when so examined as a witness for the state, be altogether pardoned of any and all participation in any crime arising under the provisions of this act.

21. In all investigations and trials growing out of a lynching or attempted lynching, no evidence shall be incompetent on the ground that it is hearsay, if the judge, in his discretion, finds that such evidence is trustworthy.

22. Any county commissioner, sheriff, mayor, chief of police or prosecuting attorney, or any three citizens, may, in the name of the State of ————, apply to any judge of the ———— Court for a restraining order or temporary injunction to prevent any lynching or attempted lynching. Upon the filing of such an application, the judge shall proceed forthwith to a consideration of the grounds set forth in the complaint. If it appears that a lynching or an attempted lynching is contemplated, planned or likely to take place, the judge shall issue a restraining order or temporary injunction in such terms and against such persons as will in his discretion be most likely to prevent the occurrence.

23. Any participation in or procurement of the lynching or attempted lynching of any person in custody or out on bond, or of any person acquitted of any criminal charge within the preceding 30 days, or of any person on trial for any crime, shall constitute a contempt of the court having general criminal jurisdiction in the county where the victim was in custody, admitted to bail, or on trial, or where the acquittal took place, as the case may be.

24. Any violation of any restraining order or any injunction authorized by this act, or any contempt of court defined by this act, may be punished by a fine of.....or by imprisonment in.....not less than .....nor more than....., or by both such fine and imprisonment.

APPENDIX B

In the following pages the questionnaire referred to in the text is set forth. Wherever the answers can be compiled they are given in tabular form.

THE QUESTIONNAIRE

The questionnaire is divided into three parts. In Part I your opinion is sought on statutes which have been passed in several states. In Part II, the questions concern legislation which has been proposed but not enacted. In Part III, general questions about the administrative and judicial system of your state are asked. For your convenience, practically all of the questions may be answered by "yés" or "no." Space is left, however, for your reasons in any case where you care to give them, and you are urged to do so. No names will be divulged in connection with any response made.

PART I. EXISTING LEGISLATION

A. Penalties

1. Minnesota Code, 10036, is as follows: "Lynching is the killing of a human being by the act or procurement of a mob."

(a) Is this a desirable statutory definition?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	3	12	3	13	3	30	13	5	1	1	1	2	3	9	2	6	4	23	3	16	7	12	2	138	45

(b) Should mob-injury be also included as lynching?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
5	10	6	9	8	8	17	27	5	1	1	2	1	3	4	5	4	7	12	21	18	13	4	10	85	116

(c) Some statutes provide that, to constitute lynching, the person killed must be in the custody of peace officers. Is this a desirable limitation?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
..	14	2	16	3	13	4	48	1	6	..	3	..	4	..	12	2	9	3	30	6	26	..	16	21	197

(d) Some provide that the person killed must have been charged with a crime. Is this limitation desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2	12	3	15	3	13	4	45	..	7	..	3	..	4	..	13	..	11	3	31	2	29	..	14	17	197

(e) Should a numerical minimum of persons necessary to constitute a mob be included? If so, what number?

2. South Carolina Constitution, Art. VI, 6, is as follows: "In all cases of lynching when death ensues, the county where such lynching takes place shall be liable in exemplary damages of not less than $2,000 to the legal representative of the person lynched."

(a) Is this a desirable general remedy?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	10	3	13	4	13	15	28	5	2	..	3	1	4	7	5	3	7	22	7	14	15	3	11	80	118

(b) If so, should this relief be limited to cases where the lynched person was in the custody of peace officers?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1	3	5	2	7	5	9	24	3	4	1	1	2	..	4	4	6	1	7	24	13	11	1	5	59	84

(c) Should the county be also fined for aggravated mob injury?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
..	11	1	14	3	15	9	38	3	4	..	2	1	2	5	8	1	6	12	21	9	17	..	10	44	148

(d) Should any county liability for mob violence accrue only when the peace officers thereof have failed to do their duty in attempting to prevent the lynching?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	2	5	5	4	3	17	15	3	3	2	1	2	..	3	8	5	1	3	25	8	14	1	3	56	80

3. Illinois Code, chap. 38, par. 542, is as follows: "If any person is taken from the hands of a sheriff or his deputy and lynched, it shall be prima facie evidence of such sheriff's failure to do his duty. The Governor shall declare his office vacant and the sheriff shall be ineligible for reëlection or reappointment. If, on proper petition, the Governor finds that the sheriff has done all in his power to protect such prisoner and perform the duties required of him by existing laws respecting the protection of prisoners, the Governor may reinstate the sheriff."

(a) Is this a desirable general remedy?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10	3	11	7	13	5	34	10	7	..	3	..	2	1	10	3	8	2	21	9	24	7	6	5	149	52

(b) Should the provisions of such an act be made to apply regardless of whether the lynched person was in the custody of the sheriff?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2	8	1	14	1	15	9	28	1	4	2	1	..	4	1	7	..	8	10	14	5	21	2	9	34	133

(c) Should they be made to apply in cases of mob injury?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	8	8	7	5	10	25	12	5	1	3	..	2	2	7	2	6	3	13	13	19	9	6	5	102	72

(d) If so, should there be a limitation to cover only cases of mob-injury of persons in custody of such peace officers?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
5	1	7	4	6	2	16	13	5	..	..	2	3	..	7	1	5	1	7	12	8	9	3	3	72	48

(e) Should removal, be by court on conviction, or by the Governor summarily?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Court	Gov–ernor	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v	Ct	G'v
6	7	10	5	1	9	29	8	2	2	2	1	1	3	1	6	3	6	5	21	4	21	7	4	71	93

(f1) Should the sheriff be made to show for reinstatement that he has armed or made a reasonable attempt to arm the prisoner? (f2) employ guards? (f3) remove the prisoner? (f4) that where the prisoner was jailed, the jail was guarded with riot arms, which were used or a reasonable attempt made to do so?

(f1)

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2	4	4	6	3	9	2	33	5	2	1	2	..	..	..	7	3	4	6	8	2	12	..	4	28	91

(f2)

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6	1	10	3	9	3	25	11	4	..	3	..	1	..	6	..	5	3	12	2	13	2	3	2	97	27

(f3)

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6	1	11	1	10	2	25	12	4	..	3	..	1	..	6	..	4	3	11	3	13	2	4	1	98	25

(f4)

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4	2	5	3	10	2	23	12	4	..	3	..	1	..	5	1	3	5	11	2	11	3	3	1	83	31

(g) Should reinstatement be optional with the Governor, as in the Illinois statute *supra*?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
7	5	4	9	8	5	26	9	3	2	..	2	2	2	5	2	7	1	17	7	16	2	3	4	98	50

B. Procedure

1. Indiana Code, 2533, is as follows: "Lynchers and accessories may be prosecuted by indictment or by affidavit filed by the prosecuting attorney or the attorney general."

(a) If constitutionally possible, is this procedure desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
11	3	16	2	17	1	37	11	7	..	3	..	2	1	11	..	7	1	26	5	25	4	8	6	170	34

(b) Is it your observation that few, some, many, most (strike out words not applicable) prosecutions for lynching break down because of the impossibility of getting a grand jury indictment?

2. Public Laws Virginia, 1928, chap. 213, 4, is in part as follows: ". . . The Governor may designate the Attorney General and other prosecutors (to enforce provisions of the Act against lynching) and spend such sums of money as he may deem necessary."

(a) Is this procedure desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
13	..	11	3	17	..	34	13	6	..	3	..	3	2	11	..	11	..	25	3	29	4	15	1	178	26

3. North Carolina Code, 4600, is as follows: "Any adjoining County to County of lynching shall have jurisdiction over the lynching. The solicitor shall furnish information to the grand juries of all such adjoining counties."

(a) Is this procedure desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	10	8	10	12	5	27	16	4	..	3	..	2	2	10	2	9	..	20	3	21	8	4	7	123	63

4. North Carolina Code, 4571, is in substance as follows: No witness shall be privileged on the ground of self-incrimination on a preliminary hearing growing out of a lynching, a grand jury investigation, or trial, but shall be granted personal immunity from prosecution.

(a) Is this procedure desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	5	11	7	15	1	35	14	7	..	2	1	4	..	9	3	8	1	14	11	26	5	14	1	154	49

5. Georgia Code, 964, is as follows: "It shall be lawful for the judge of a circuit in which a crime is alleged to have occurred to change the venue on his own motion whenever, in his judgment, the accused will be lynched . . . if carried back or allowed to remain in the county alleged as the scene of the crime." There is further provision for change of venue on petition, with stipulation that a bill of exceptions at such interlocutory hearing shall be a supersedeas, and the appeal shall take precedence in the Supreme Court, which shall be convened if not sitting.

(a) Is it your opinion or observation that a change of venue often averts a threatened lynching?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8	2	9	5	10	4	31	11	5	1	1	1	2	2	6	4	3	3	16	5	23	4	9	3	123	45

(b) Is the procedure embodied in the above statute an improvement of your present practice in such cases?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
7	2	10	5	12	3	..	..	4	2	2	1	3	1	6	3	3	4	19	6	14	12	4	5	84	44

(c) Would it be desirable to provide for automatic change of venue in every trial for certain enumerated crimes? If so, for what crimes?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1	11	6	8	2	13	14	27	..	7	1	1	2	3	1	10	2	6	6	20	4	23	1	10	40	139

6. Arkansas Code, 2211, is as follows: "Wherever the crime of rape, attempt to commit rape, murder of any other crime calculated to arouse the passions of the people to an extent that the sheriff of the county apprehends that mob violence will be committed, it shall be the duty of the sheriff to request a special term of court of the

judge." Further provision is made for the judge's calling such term within ten days of the receipt of notice from the sheriff.

(a) Is it your observation or opinion that a special term of court to try a person threatened with lynching often averts a lynching?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8	2	9	6	13	5	22	16	3	3	1	1	4	..	2	6	3	5	8	15	21	5	7	3	101	67

(b) Do you think such trials have or would have a tendency to be unfair to the accused?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	3	8	6	11	3	38	7	5	..	1	2	3	1	5	4	7	1	25	1	17	11	9	3	138	42

(c) If so, would a provision for changing the venue of the specially called trial relieve it of this unfairness?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8	1	13	2	10	1	26	7	5	..	2	1	4	1	5	1	2	2	14	5	16	4	5	3	110	28

(d) Is the above statute an improvement over your present practice?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
5	7	..	..	5	8	8	28	4	1	..	2	2	2	4	7	1	4	4	21	8	10	1	9	42	99

PART II. PROPOSED LEGISLATION

1. Investigation shows that in many lynchings there would have been time enough, and the leaders were definitely enough known, to have secured a temporary injunction restraining them and all others from lynching the threatened person.

(a) Do you think this would be a desirable remedy?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4	10	5	10	5	11	10	33	..	7	..	3	3	2	4	8	3	8	3	21	5	26	2	10	44	149

(b) Off-hand, do you think a statute in your state providing for such injunction would be constitutional?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6	5	6	8	9	4	35	12	5	2	..	2	3	1	7	2	5	3	16	6	21	2	5	6	118	53

2. Would it be desirable to provide by statute that, wherever a prisoner has been taken in custody by the sheriff, or other peace officer, that such officer shall be deemed to be acting as an officer of the local court of general criminal jurisdiction, whether or not any actual criminal proceedings have as yet been instituted, and that any interference with such custody shall be punishable summarily as contempt?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	2	6	1	3	4	21	9	2	1	..	..	3	..	2	4	2	1	13	2	12	2	..	4	67	30

(a) Off-hand, would you think such provision constitutional?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6	4	9	5	8	7	28	6	3	1	..	..	4	..	6	4	5	2	15	8	20	4	7	4	111	45

3. Please state your approval, or disapproval of the proposed Dyer Bill making lynching a federal crime with a $10,000 penalty on the offending county.

Ala.		Ark.		Fla.		Ga.		Kr.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Ap-	Disap-																								
proval	proval	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis	Ap	Dis
..	13	1	17	..	17	3	44	3	4	..	3	..	5	3	9	..	11	2	30	2	25	..	16	14	194

4. Would a statute providing for admitting heresay evidence at a grand jury investigation of a lynching be desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2	8	4	12	6	9	9	34	1	4	1	1	1	2	2	8	5	4	4	24	9	12	..	13	44	131

(a) Would a similar provision with reference to the trial jury hearing be desirable?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1	13	..	18	..	17	2	47	..	6	1	1	..	4	1	11	2	9	1	29	3	27	2	14	13	196

PART III. GENERAL

1. Do any weaknesses of local governmental structure or practice exist in your state which directly or indirectly make easier the practice of lynching with impunity, such as small counties or elective peace and judicial officers, etc.? Please elaborate.

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3	6	8	4	5	4	18	11	2	1	2	1	2	1	2	4	5	5	14	6	8	7	1	6	70	56

2. It seems generally agreed that local sentiment frustrates judicial efforts to punish lynchers. In what of the following suggested ways does this break down most frequently occur:

   1. Failure of the prosecuting officer to investigate and furnish the grand jury with evidence?
   2. Refusal of persons with first-hand knowledge to testify before the grand jury and the consequent necessity of relying on heresay testimony?
   3. Failure of the grand jury to made adequate investigation?
   4. Nolle prosequi by prosecuting officer?
   5. Adverse trial court rulings on motions and evidence?
   6. Trial jury verdict actuated by local prejudice in lieu of consideration of evidence?
   7. Reversal by appellate court on non-prejudicial error?

3. Is it your observation or opinion that the administration of criminal justice in your state encourages lynching by failing in sure and swift punishment of the crimes which might incite it?

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4	6	6	9	5	9	20	26	1	6	..	3	1	3	3	6	1	7	15	11	14	9	2	11	72	106

4. Please place your name here and state whether there have been any lynchings within your mature recollection in any locality in which you have resided.

Ala.		Ark.		Fla.		Ga.		Ky.		La.		Miss.		Mo.		N. C.		S. C.		Tex.		Va.		Total	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
6	6	8	8	11	6	20	26	4	3	3	..	3	2	4	9	8	3	18	11	18	13	5	10	108	97

APPENDIX C

EXISTING LEGISLATION

Alabama

Ala. Code (Michie, 1928)

Section 4939. Any number of persons assembled for any unlawful purpose and intending to injure any person by violence and without authority of law shall be regarded as a mob, and any act of violence exercised by such mob upon the body of any person shall, when such act results in the death of the injured person, constitute the crime of lynching; and any person who participates in or actively aids or abets such lynching shall, on conviction, suffer death or be imprisoned in the penitentiary not less than five years, at the discretion of the jury, and any person, who being a member of any such mob and present at any such lynching, shall not actively participate in the lynching, shall be deemed guilty of abetting such lynching, and, on conviction, shall be imprisoned in the penitentiary not less than one year nor more than twenty-one years at the discretion of the jury.

Section 4940. Any sheriff, deputy sheriff, or jailer who negligently or through cowardice, allows a prisoner to be taken from the jail of his county, or to be taken from his custody and put to death by violence, or to receive bodily harm, must on conviction, be fined not less than five hundred nor more than two thousand dollars, and may also be sentenced to hard labor for the county for not more than two years.

Constitution. Section 138. ". . . Whenever any prisoner is taken from jail, or from custody of any sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached under section 174 of this Constitution. If the sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this state during the time for which he had been elected or appointed to serve as sheriff.

Arkansas

Ark. Dig. Stat. (Crawford & Moses, 1921)

Section 2211. Whenever the crime of rape, attempt to commit rape, murder or any other crime calculated to arouse the passions of the people to an extent that the sheriff of the county apprehends and believes that mob violence will be committed within the State of Arkansas, it shall be the duty of the sheriff of the county in which the crime of rape, murder or any other crime herein described shall have been committed to notify the judge of the circuit or district including such county of the facts in the case, and to request such judge to call a special term of court in order that the person or persons charged with such crime or crimes may be brought to an immediate trial.

Section 2212. It shall be the duty of such circuit judge upon receipt of such notice and request from such sheriff and upon due consideration of the subject and upon finding that the apprehensions and belief of the sheriff are well-founded to call a special term of his court, impanel a special grand jury and provide all the necessary judicial machinery for the legal trial of the person or persons charged with the crime or crimes above designated, such trial to begin within ten days from the receipt, by such judge, of such notice from the sheriff as herein provided.

Section 2213. In case the sheriff of any county shall neglect, fail, or refuse to perform the duty imposed upon him by the provisions of this act, then and in that event, any number of citizens, heads of household, not less than seven, of the county in which such crime or crimes shall have been committed, may request the said sheriff in writing to notify such judge of the conditions here described.

Section 2214. In case it shall be impossible, on account of illness or for any other cause, for the circuit judge of the circuit in which such crime or crimes shall have been committed to perform the duties herein prescribed then and in that event, it shall be the duty of such circuit judge to call such special term and the lawyers practicing in his circuit, and present at the time and place for which such special term is called, may elect a special judge in the manner now practiced who shall perform the duties imposed upon

such circuit judge, and such special judge so elected, shall have the power and authority of the said circuit judge. Provided, that in case such circuit judge shall be engaged in holding court in some other county in his circuit, he is hereby authorized to adjourn such court and to proceed as herein specified, but if said judge is, at the time of the receipt of such notice, in the midst of the trial of any case, then said case shall be disposed of before such special trial.

Section 2215. In case any defendant charged with any of the crimes herein mentioned, shall take a change of venue to any other county than that in which the crime or crimes shall have been committed, then in that event it shall be the duty of the circuit judge, or of the special judge, if one be elected as provided for in Section 2214, either by calling a special term, or by fixing a day during the regular term of court, to arrange for the trial of such defendant at the earliest date possible, such trial to begin, in any event, within ten days from the date of the granting of such change of venue.

Section 2216. The expenses of the special term of court herein provided shall be paid as the other expenses of the county are paid.

Section 2217. If any sheriff of any county in this State shall neglect, fail or refuse to perform the duties herein provided, after he shall have received the request from the citizens of the county, as provided in Section 2213, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than two hundred dollars nor more than one thousand dollars.

California

Cal. Pol. Code (Deering, 1923)

Section 4452. Every county and municipal corporation is responsible for injury to real or personal property situated within its corporate limits, done or caused by mobs or riots.

Colorado

Colo. Ann. Stat. (Mills, 1930)

Section 4146. Whenever the safe-keeping and detention of persons lawfully committed to any jail in this state shall, in the

opinion of the board of county commissioners, require the employment of one or more guards, the said board of county commissioners of the county where such jail is situated, shall authorize the sheriff of such county to employ such guard or guards at the expense of the county, at such reasonable compensation as such board shall allow, which guard or guards shall be under the command of the keeper of the jail: Provided, that such guard or guards shall be discharged from service whenever in the judgment of the board of county commissioners their services are not required.

Connecticut

Conn. Gen. Stat. (1930)

Section 514. Each city and borough shall be liable for all injuries to person or property, including injuries causing death, when such injuries are caused by an act of violence of any person or persons while a member of, or acting in concert with, any assembly of persons engaged in disturbing the public peace; provided such city or borough, or the police or other proper authorities thereof, shall not have exercised reasonable care or diligence in the prevention or suppression of such mob, riotous assembly or assembly engaged in disturbing the public peace. Each sheriff shall be allowed a reasonable compensation for the services and expenses of himself, his deputies, or other persons called to assist him, while engaged in preventing or suppressing any mob or riotous assembly, preserving the public peace or affording protection to any person or property endangered by any mob or riotous assembly or any assembly of persons engaged in disturbing the public peace; such compensation and expenses to be audited, approved, and taxed by a judge of the superior court and to be paid by the state in the same manner as costs in criminal cases. Each city and borough shall be liable to the state for any sums paid for compensation or expenses of any sheriff, his deputy or other persons called upon to assist him, while engaged in preventing or suppressing any mob or riotous assembly, preserving the public peace or affording protection to any person or property endangered by any mob or riotous assembly of persons engaged in disturbing the public peace, within such city or borough. Any person claiming damages under this section from any city or borough shall give written notice to

the clerk of the city or borough of such claim and of the injury upon which such claim is based, containing a general description of such injury, and of the time, place, and cause of its occurrence within thirty days after the occurrence of such injury; and an administrator or executor seeking to recover damages for the death of a decedent whom he represents shall give such written notice within thirty days after his appointment; provided such notice shall be given not later than four months after the death of the injury so causing the death of the decedent whom he represents. The expense for which such city or borough is made liable to the state under the provisions of this section shall, in case more than one municipal corporation shall be jointly responsible for the expense aforesaid, be assessed by the tax commissioner, the attorney general and the comptroller, acting as a board of assessors. Such board of assessors may apportion such expense among the different municipal corporations so jointly responsible in such manner as shall to it seem just. An appeal from the action of such board of assessors may be taken to the superior court for the county in which the appellant city or borough is situated, and, if the cities or boroughs concerned are located in different counties, then such appeal may be taken to the superior court of that county in which the city or borough concerned having the largest population according to the last preceding census is located. The amount of such assessment against any city or borough for which it is liable to the state under the provisions of this section shall be certified to the clerk of such city or borough by the comptroller as soon as such assessment shall be made, and the appeal from such assessment provided herein shall be taken by such city or borough within thirty days from the receipt by it of such certificate of assessment by the comptroller.

Florida

Fla. Comp. Laws (1927)

Section 8541. When in the opinion of the Governor the interests of the State demand it, the circuit judge shall, upon the request of the Governor, make an order directing that any person held under a criminal charge shall be confined in the jail of another county of the State than that in which the offense charged is alleged to have been committed. No such order shall be made

except by the judge of the circuit in which the county where the offense is alleged to have been committed is located. Such order shall be of full force and effect throughout the State, but the county to which the prisoner charged or convicted is sent, or any officer thereof, is not required to incur or pay any expense or charge of maintaining such prisoner.

Georgia

Ga. Code Ann. (Michie, 1926)

Section 964. . . . "It shall be lawful for the judge of Superior Court of the circuit in which a crime is alleged to have been committed to change the venue for the trial of said case on his own motion, with or without petition, whenever, in his judgment, the accused party will be lynched, or there is danger of violence being attempted to be committed on said accused, if carried back or allowed to remain in the county where the crime is alleged to have been committed. And if a motion by petition shall be made by the accused for a change of venue, said judge shall hear the same at chambers, with or without the presence of the accused, at such time and place in the State as he may direct. And if the evidence submitted shall reasonably show that there is probability or danger of lynching, or other violence, then it shall be mandatory on said judge to change the venue to such county in the State, as, in his judgment, will avoid such lynching. The petitioner shall have the right to except to the ruling of the court at such interlocutory hearing and the bill of exceptions when signed shall operate as a supersedeas in the trial of said case, until passed on by the Supreme Court; Provided, that said prisoner shall present said bill of exceptions to the judge hearing said motion within six days after the refusal to grant said motion. And said bill of exceptions shall be filed in the office of the Superior Court of the county of the alleged crime without (sic) two days after being signed by the judge; and said clerk shall transmit said bill of exceptions and the required record of said case as early as possible and not exceeding ten days from the filing in said office, to the Supreme Court. And said case in the Supreme Court shall be heard as soon as possible, taking precedence of all other causes. Provided, that should the Supreme Court not be in session at the term said writ of error is received in said court, it shall be the duty

of the clerk of said Supreme Court to at once notify the Chief Justice of said court, or in his absence or illness, one of the other justices of said court, of the receipt of said writ of error; and it shall be the duty of said justice to at once convene said Supreme Court, for the purpose of hearing said case, and said Supreme Court shall remand said case with directions or pass such final order as may be deemed proper and correct.

Section 362. Whenever any officer, charged with the duty of preserving the peace and executing the lawful warrants of this State, has knowledge of any violence attempted to be perpetrated upon any citizen of this State by mob violence and without due authority of law, it shall be his duty, to summon to his assistance, either in writing or verbally, when necessary, any of the citizens of the neighborhood or county, whose duty it shall be to prevent such mob violence, if in their power to prevent it, and they shall use every means in their power to prevent it. It shall be the duty of the sheriff or other officer charged with this duty, and of the posse summoned as aforesaid to the end of suppressing a riot or preventing mob violence, to arrest the person engaged in the same and place them in the common jail of the county, or other place of safety, to be dealt with as the law directs; and any person so engaged in mobbing or lynching any citizen of this State without due process of law shall be punished by imprisonment in the penitentiary for not less than one nor more than twenty years, and should death result from such mob violence, then the prisoner causing said death shall be subject to indictment and trial for the offense of murder.

Section 363. Any sheriff or other officer having knowledge of a meeting or assembling together of any citizens of the State for the purposes set forth in the preceding section, and failing to attempt in good faith to suppress the same, either by himself or by summoning a posse as prescribed in said section shall be guilty of a misdemeanor.

Section 364. Any person thus summoned who shall fail or refuse to respond to the officer's summons, and assist in suppressing any mob violence being committed or about to be committed as aforesaid (unless such person is physically unable to respond) shall be guilty of a misdemeanor.

Section 365. Whenever any citizen of this State shall be summoned as aforesaid, it shall be the duty of the officer so summoning to notify such person to bring with him such firearms or other weapons as are necessary to be used in suppressing such mob violence, and it shall be the duty of such person to respond promptly with such arms or weapons as he may be able to procure; and the arresting officer or his posse may, if the exigency of the case require, in order to prevent human life from being taken by mob violence, take the life of any person attempting mob violence, in order to prevent it; Provided, life shall not be taken, unless it be necessary to save the life of the person being mobbed, or to protect the lives of such arresting officer or his posse.

Section 1467 (88). The commanding officer or any body of said military forces, guarding any jail, building or other place or escorting any prisoner or performing any other act of duty, may, if he deems it advisable, prescribe a reasonable distance in the vicinity of such jail, building or other place, or escort of such prisoner within which persons shall not come, and any person coming within such limits without the permission of said officer, or refusing to depart after being ordered to do so, shall be guilty of a felony and upon conviction, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, and shall be placed under arrest by the military authorities, using such force as may be necessary.

Idaho

Idaho Comp. Stat. (1919)

Section 9421. *Use of jail of contiguous county.* When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the probate judge may, by a written appointment filed with the county recorder, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

Section 9428. *Employment of guard.* The sheriff, when necessary, may, with the assent in writing of the probate judge, or in a city, of the mayor thereof, employ a temporary guard for the pro-

tection of the county jail, or for the safe-keeping of the prisoners, the expenses of which are a county charge.

Illinois

Ill. Stat. Ann. (Callaghan, 1924)

Paragraph 458—Section 224b. *Publication representing hanging, lynching or burning—Punishment.* It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, or advertise or present or exhibit in any public place in the State any publication or representation by lithograph, moving picture, play drama or sketch representing or purporting to represent any hanging, lynching or burning of any human being. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00).

Paragraph 537—Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* that any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a "mob."

Paragraph 538—Section 2. *"Serious injury"* defined. The term "serious injury," for the purposes of this act, shall include any injury to property which shall cause damage to the owner thereof, or any injury to the persons which shall temporarily or permanently disable the person injured from earning a livelihood.

Paragraph 539—Section 3. *Intent to inflict injury—Penalty.* Any person or persons who shall compose a mob, with the intent to inflict damage or injury to the person or property of any individual charged with a crime, or, under the pretence of exercising correctional powers over such person or persons by violence, and without authority of law, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and may be imprisoned in the county jail not less than thirty days nor to exceed twelve months for each and every offense.

Paragraph 540—Section 4. *Mobs—Damage to property or serious injury to persons by—Penalty—Action against county or city.* Any person or persons, composing a mob under the provisions of this act, who shall by violence inflict material damage to the property or serious injury to the person of any other person upon the pretence of exercising correctional powers over such person or persons, by violence and without authority of law, shall be deemed guilty of a felony, and shall suffer imprisonment in the penitentiary not exceeding five years; and any person so suffering material damage to property or injury to person by a mob shall have an action against the county or city in which such injury is inflicted, for such damages as he may sustain, to an amount not exceeding five thousand dollars.

Paragraph 541—Section 5. *Death of victim—Heirs may recover from county or city.* The surviving spouse, lineal heirs, or adopted children or any such other person or persons who, before the loss of life, were dependent for support upon any other person who shall hereafter suffer death by lynching at the hands of a mob, in any county or city of this State, may recover from such county or city damages for injury sustained by reason of the loss of life of such person, to a sum not exceeding five thousand dollars.

Paragraph 542—Section 6. *Removal of sheriff where prisoner is lynched—Reinstatement.* If any person shall be taken from the hands of a sheriff, or his deputy, having such person in custody, and shall be lynched, it shall be *prima facie* evidence of failure on the part of such sheriff to do his duty, and upon the fact being made to appear to the Governor, he shall publish proclamation declaring the office of such sheriff vacant, and his office shall thereby and thereafter immediately be vacated, and the coroner shall immediately succeed to and perform the duties of sheriff until the successor of such sheriff shall have been duly elected or appointed, pursuant to the existing law providing for the filling of vacancies in such office, and such sheriff shall not thereafter be eligible to either election or reappointment to the office of sheriff: *Provided, however,* that such former sheriff may, within ten days after such lynching occurs, file with the Governor his petition for reinstatement to the office of sheriff, and shall give ten days notice of the filing of such petition to the prosecuting attorney of the

county in which such lynching occurred, and also to the Attorney General. If the Governor, upon hearing the evidence and argument, if any presented, shall find that such sheriff has done all in his power to protect the life of such prisoner and performed the duties required of him by existing laws respecting the protection of prisoners, then such Governor may reinstate such sheriff in his office and shall issue to him a certificate of reinstatement, the same to be effective on the day of such order of reinstatement, and the decision of such Governor shall be final.

Paragraph 543—Section 1. *Damage to property by mobs—City and county liable. Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever any building or other real or personal property, except property in transit, shall be destroyed or injured in consequence of any mob or riot composed of twelve or more persons, the city, or if not in a city, then the county in which such property was destroyed shall be liable to an action by or in behalf of the party whose property was thus destroyed or injured, for three-fourths of the damages sustained by reason thereof.

Paragraph 544—Section 2. *Actions—Judgments.* Such action may be brought in the form of an action on the case, or other appropriate action, and whenever any final judgment shall be secured against any such city or county in any such action, the same shall be paid in due course as in case of other judgments.

Paragraph 545—Section 3. *Owners of property barred from recovery by neglect.* No person or corporation shall be entitled to recover in any such action if it shall appear, on the trial thereof, that such destruction or injury of property was occasioned, or in any way aided, sanctioned or permitted by the carelessness, neglect or wrongful act of such person or corporation; nor shall any person or corporation be entitled to recover any damages for any destruction or injury of property as aforesaid, unless such party shall have used all reasonable diligence to prevent such damage.

Paragraph 546—Section 4. *Suit may be brought against private persons.* Nothing in this Act shall be construed to prevent any person or corporation whose property has been injured or destroyed in consequence of any mob or riot, from having or main-

taining an action, or actions, against any person or persons, engaged or in any manner participating in such mob or riot, for the recovery of the damages sustained thereby: *Provided,* that when such city or county shall have paid any part of such damage, such city or county making such payment shall have a lien to the amount so paid upon any judgment or claim, against any person or persons engaged in, or in any manner participating in such mob or riot, together with the right and power to enforce and collect such judgment or claim; and when such city or county shall have been reimbursed the money so paid by it, such portion of such judgment or judgments, or claim or claims remaining unpaid shall then revert to, and become the property of, the original owner thereof, and such owner shall have the right to enforce and collect the same.

Paragraph 547—Section 5. *Cities and counties may bring action against private person for recovery of judgment.* It shall be lawful for the city or county against which a judgment or judgments, for damages shall be recovered under the provisions of this Act, to bring an action or actions against any person or persons, engaged, or in any manner participating, in said mob or riot, for the recovery of the amount of said judgment or judgments and costs, and such action shall not abate or fail by reason of too many or too few parties defendant being named therein; the same shall, to all intents and purposes, be treated as an action of trespass brought by the owners of such property, except that the statute of limitations as to such action shall not begin to run against said city or county until its liability is fixed by judgment as hereinbefore provided.

Paragraph 548—Section 6. *Notice of claim for damages.* No action shall be maintained under the provisions of this Act by any person or corporation whose property shall have been destroyed or injured as aforesaid, unless notice of claim for damages occurs, and such action shall be brought within twelve months after such destruction or injury occurs, but nothing in this Act shall be construed as authorizing any recovery by the United States, the State of Illinois, or any county for the destruction of, or injury to property by mobs or riots.

Paragraph 549—Section 7. *Settlement for damages without suit. Action for recovery.* Any city or county may settle with, and

pay, the owner of any such property the damages so sustained; and any such city or county which shall have paid any sum under the provisions of this Act, whether by voluntary settlement or otherwise, may recover the same with all costs paid by it, from any or all the persons engaged in the destruction or injury of the property so paid for.

Section 10. *Jail in other county, when may be used.* When there is no jail in a county, or the jail of the county is insufficient, the sheriff may commit any person in his custody, either on civil or criminal process to the nearest sufficient jail of another county, and the warden of the jail of such other county shall receive and confine such prisoner until removed by order of the court having jurisdiction of the offense, or discharged by due course of law.

Section 13. *Employment of guard.* Whenever the warden of any jail shall have in his custody any person charged with a capital offense or other high crime, and there is no jail in his county, or the jail is insufficient, he may, with the advice of the judge of the circuit court, or, in the county of Cook, of either of the judges of the criminal court of Cook County, or, in any county with the advice of the judge of the county court of such county, employ a sufficient guard, not exceeding three persons, for the guarding and safe keeping of such prisoner in his own county. The expense of such guard shall be audited and paid as other county expenses.

Indiana

Ind. Ann. Stat. (Burns, 1926)

Section 2175. (2012) *Mob—Protection of prisoner.*—141. Whenever any person has been arrested and is confined in any county jail before trial, and there is in the opinion of the sheriff of such county, danger that the accused may be injured or killed by the violence of a mob, the judge of the circuit court of such county, if present in the county, or, in case of his absence, the clerk of such court, shall give a written order to the sheriff of the county to remove the accused to a safe place of confinement, and such sheriff shall at once cause such prisoner to be removed to the jail of the county nearest having a sufficient jail and proper provision for protecting the accused, or, if he deem it necessary, to the nearest state prison or reformatory, for the temporary safe-

keeping and protection of such prisoner. And the sheriff of such nearest county, or the warden or superintendent of such prison, shall, on the exhibit of such written order, receive and keep in his custody the prisoner ordered to be committed as aforesaid, and the county from which such prisoner was sent shall pay all expenses of such removal and keeping. The said sheriff, or warden or superintendent, shall, upon the order of the circuit court of the county from which the prisoner was sent, or the judge thereof, redeliver such prisoner when demanded.

Section 2531. (2336) *Lynching—Mob defined*—440. Any number of persons assembled for any unlawful purpose and intending to injure any person by violence and without authority of law shall be regarded as a mob, and any act of violence exercised by such mob upon the body of any person shall, when such act results in the death of the injured person, constitute the crime of lynching; and any person who participates in or actively aids or abets such lynching shall, on conviction, suffer death or be imprisoned in the state prison during life; and any person who, being a member of any such mob and present at any such lynching, shall not actively participate in the lynching shall be deemed guilty of abetting such lynching, and on conviction, shall be imprisoned in the state prison not less than two years nor more than twenty-one years.

Section 2533. (2338) *Lynching—Prosecution of persons*—442. Any person accused of the crime of lynching or as an accessory after the fact may be prosecuted in the proper circuit or criminal court, by indictment or by affidavit filed by the prosecuting attorney or by the attorney-general.

Section 2534. (2339) *Lynching—Prosecution of sheriff, removal*—443. Any sheriff or other officer having any person in his lawful custody, who shall unlawfully suffer or permit such person to be taken from such custody and lynched, shall be deemed guilty of failure of official duty, and on conviction, shall be fined not exceeding one thousand dollars and shall be removed from office and his office declared vacant. The prosecution against such sheriff or other officer in any such case shall be in-

stituted by the attorney-general, by presentation in the proper circuit or criminal court, on an affidavit against such sheriff or other officer, sworn to by any citizen of the state, charging him with such offense, and indorsed by the attorney-general as is by this act provided in prosecutions by affidavit in other cases by prosecuting attorneys. In case of any such taking and lynching of any such person, the taking of such person from the custody of such sheriff or other officer having him in charge shall be prima facie evidence of the failure of official duty on the part of such sheriff or other officer.

Section 2535. (2340) *Lynching of prisoner threatened—Aid to the sheriff*—444. If, at any time, the sheriff has reason to believe, and does believe, that any prisoner in his custody is in danger of being lynched, it shall be his duty, at once, to command all bystanders and others with whom he can directly communicate to aid and assist him in the defense of such prisoner and to furnish such assistants with such weapons as shall be necessary to protect such prisoner. And if any such bystander or other person so requested by the sheriff to aid him shall fail or refuse to assist in defending such prisoner, the person so failing or refusing shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars and be imprisoned in the county jail not exceeding six months.

Section 2536. (2341) *Lynching of prisoner threatened—Military force*—445. If at any time, any sheriff has reason to believe, and does believe, that a prisoner in his custody is in danger of being lynched, and that he is not able to protect the life of the prisoner without additional help, he shall at once notify the governor and ask the aid of the state. Thereupon the governor shall be authorized to furnish such military force as may be necessary to preserve order and protect such prisoner; and the auditor of the state shall draw a warrant upon the treasurer of state for payment of the expenses thereby incurred: Provided, however, That such sheriff shall not make such demand upon the governor until he shall first have exhausted all other means at his command for the protection of such prisoner.

Kansas

Kan. Rev. Stat. Ann. (1923)

Section 21-1003. *Mob and lynching defined; aiding or abetting lynching.* That any collection of individuals assembled for an unlawful purpose, intending to injure any person by violence, and without authority of law, shall for the purpose of this act be regarded as a "mob," and any act of violence exercised by such mob upon the body of any person shall constitute the crime of "lynching," when such act or acts of violence result in death; and any person who participates in or aids or abets such lynching, upon conviction thereof shall be imprisoned in the state prison for not more than five years or during life, in the discretion of the jury.

Section 21-1004. *Accessories after the fact in lynching.* Every person who shall, after the commission of the crime of lynching, harbor, conceal or assist any member of such mob who participates in or who aids or abets such crime, with the intent that he shall escape detention, arrest, capture, or punishment, shall be deemed to be and shall be an accessory after the fact, and may be charged, tried and convicted and punished though such member be neither charged, tried, nor convicted, and upon conviction thereof shall be imprisoned in the state prison not more than twenty-one years nor less than two years.

Section 21-1005. *Prosecution of lynching offenders.* Any person accused of the crime of lynching or as an accessory after the fact may be prosecuted in the courts of this state by information filed and signed by the prosecuting attorney or attorney-general, based upon the affidavit of some competent and reputable person.

Section 21-1006. *Jurisdiction of courts in lynching cases.* In case any persons shall come together in any county in this state for the purpose of proceeding to another county of the state with the view of lynching any person, or in case any person or persons shall purchase or procure any rope, weapon, or other instrument in one county for the purpose of being used in lynching any person in another county, such crime of lynching, if committed, shall be and constitute a continuous offense from the time of its original inception as aforesaid; and the courts of any county in which any such overt act has been committed shall have jurisdiction over the

person of any member of the mob committing such overt act, and such person may be prosecuted in such county and punished for murder the same as if the lynching had occurred therein.

Section 21-1007. *Liability of sheriff when prisoner taken and lynched.* If any person shall be taken from the hands of a sheriff or his deputy having such person in custody and shall be lynched, it shall be evidence of failure on the part of such sheriff to do his duty, and his office shall thereby and thereat immediately be vacated, and the coroner shall immediately succeed to and perform the duties of sheriff until the successor of such sheriff shall have been duly appointed, pursuant to existing law providing for the filling of vacancies in such office, and such sheriff shall not thereafter be eligible to either election or reappointment to the office of sheriff: *Provided, however,* that such former sheriff may, within ten days after such lynching occurs, file with the governor his petition for reinstatement to the office of sheriff, and shall give ten days' notice of the filing of such petition to the prosecuting attorney of the county in which such lynching occurred and also to the attorney-general. If the governor, upon hearing the evidence and argument, if any, presented, shall find that such sheriff used reasonable effort to protect the life of such prisoner and performed the duties required of him by existing laws respecting the protection of prisoners, then such governor shall reinstate such sheriff in his office and shall issue to him a certificate of reinstatement, the same to be effective on the day of such order of reinstatement, and the decision of such governor shall be final.

Section 21-1008. *Assistance of bystanders; removal of prisoner to state prison or reformatory.* If at any time the sheriff has reason to believe and does believe that any prisoner in his custody is in danger of being lynched, it shall be his duty to at once command all bystanders and all others with whom he can directly communicate to aid and assist him in the defense of such prisoner, and to furnish such assistants with such weapons of defense as shall be necessary to protect such prisoner, and if such weapons are not at hand, it shall be the duty of such sheriff to procure and furnish such weapons to such assistants. And if any such bystander or other persons so communicated with shall fail or refuse to assist such sheriff in defending, to the utmost of his powers, such pris-

oners, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a period not exceeding six months: *Provided*, That if at such time it is compatible with the safety of the prisoner, the sheriff shall immediately remove such prisoner to the state prison or reformatory which may be deemed the most accessible.

Section 21-1009. *Aid of militia.* If at any time any sheriff has reason to believe, and does believe, that a prisoner in his custody is in danger of being lynched, and that he with his deputies and assistants, as above provided for, are not able to protect the life of such prisoner without additional help, it shall be his duty to at once, by telegraph or otherwise, notify the governor of such facts, and to ask for the aid of the militia of the state to protect such prisoner, whereupon the governor shall be authorized to furnish such militia as shall be necessary to preserve order and defend such prisoner. And it shall be the duty of the auditor of state upon a certificate being furnished therefor by the governor, to draw his warrant upon the treasurer for the expense incurred by such militia, and the treasurer shall, on presentation, pay such warrant: *Provided, however*, That such sheriff shall not make such demand upon the governor until he shall have exhausted all of the means above provided for in this act for the protection of formatory whichever may be deemed the most accessible.

Kentucky

Ky. Stat. (Carroll, 1930)

Section 8. *City; when liable for acts of mob.* If within any city, any church, convent, chapel, dwelling house, or house, used or designed for the transaction of lawful business, or ship or shipyard, boat or vessel, or railroad, or property of any kind belonging to any street or other railroad company, or any article of personal property, shall be injured or destroyed, or if any property therein or thereon shall be taken away or injured by any riotous or tumultuous assemblage of people, the full amount of the damages so done shall be recoverable by the person injured by action against the city if the authorities thereof have the ability of themselves or with the aid of their own citizens to prevent such damage: but no

such liability shall be incurred by such city unless the authorities thereof shall have had notice or good reason to believe that such riot or tumultuous assemblage was about to take place, or having taken place, shall have had notice of the same in time to prevent said injury or destruction, either by their own force or by the aid of the citizens of such city. No person shall maintain such action who shall have unlawfully contributed by word or deed toward exciting or inflaming such tumult or riot, or who shall have failed to do what he reasonably could toward preventing, allaying or suppressing it.

Section 1151a-1. *Mob defined; punishment of members.* Any number of persons more than three, assembled for the purpose of doing violence, injury to or lynching any person in custody of any peace officer or jailer in this Commonwealth, shall be regarded as a mob. Any person who takes part in and with any such mob, with the result that the person in custody meets death at the hands of any such mob shall be deemed guilty of lynching, or if the result be that the person does not meet death, any person who takes part in or with the mob shall be guilty of attempted lynching.

The penalty for lynching shall be death or life imprisonment.

The penalty for attempted lynching shall be confinement in the penitentiary for not less than two years nor more than twenty-one years.

Section 1151a-2. *Accessories.* Any person not standing in the relationship of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, who, after the crime of lynching or attempted lynching, shall harbor or conceal, or aid any member of the mob who participated in the offense with the intent that such member of such mob shall escape arrest or punishment shall be deemed accessory after the fact and may be indicted, tried and convicted and punished, and on conviction shall be punished by imprisonment in the penitentiary for not less than two nor more than twenty-one years.

Section 1151a-3. *Officers; vacation of office.* If any person, being a prisoner, or lawfully in custody, shall be taken from the hands of any sheriff, deputy sheriff, constable or any other peace

officer, or from the hands or custody of any jailer, and shall be lynched, killed, maimed or injured, it shall be prima facie evidence of failure of the officer to perform his duty, and shall be prima facie evidence of neglect of duty on the part of such officer, and when such failure in, or neglect of duty, or such lynching or injury, is made to appear to the governor, he shall at once publish a proclamation declaring the office or offices of the officer or officers vacant, at the same time mailing copy of the proclamation to such officer or officers, whereupon the office shall be immediately vacated.

Section 1151a-4. *Filling of vacancies.* When a vacancy in any office arises for the causes above set out, the county judge shall at once select a person to fill the office for the remainder of the term or temporarily as the occasion may demand, as provided for by Art. 7, K. S. Section 1526. Until such appointment shall be made, the coroner shall fill the office of sheriff and the county clerk shall take charge of the jail. In the event any officer is removed as herein provided and afterwards is reinstated, the original fidelity bond executed by said officer shall continue in full force and effect.

Section 1151a-5. *Reinstatement of officers; hearing by governor.* Any officer named above, after having vacated his office, may, within ten days thereafter, file with the governor his petition for reinstatement, of which filing he shall give written notice to the county attorney of his county, and the Commonwealth's attorney of the district of which his county is a part, and the governor shall give notice to the attorney general.

The governor shall hear the evidence, which may be oral by deposition, and arguments, if any presented, and if at such hearing the governor be of the opinion that the officer had done all in his power to protect the life and person of such prisoner and that the officer had not neglected to perform his legal duty, then the governor shall order the immediate reinstatement of such removed officer, and such order of the governor shall be final, and should he fail to reinstate, his previous order removing shall also be final.

Section 1151a-6. *Disqualified for four years.* Any officer removed, and not reinstated shall, for a period of four years thereafter be disqualified from holding any office in this Commonwealth.

Section 1241a-1. *Banding together to disturb or injure persons; or rescue; penalty.* If any two or more persons shall confederate or band themselves together for the purpose of intimidating, alarming, disturbing or injuring any person or person, or to rescue any person or persons charged with a public offense from any officer or other person having the lawful custody of any such person or persons with the view of inflicting any kind of punishment on them, or with the view of preventing their lawful prosecution for any such offense or to do any felonious act, they, or either of them, shall be deemed guilty of a felony, and upon conviction shall be confined in the penitentiary not less than one nor more than five years.

Section 1241a-2. *Banding together to injure property; penalty.* If any two or more persons shall confederate or band together and go forth, for the purpose of molesting, injuring or destroying any property, real or personal, of another person, persons or corporation, whether the same be injured, molested or damaged or not, they shall be guilty of a felony, and upon conviction shall be confined in the penitentiary not less than one nor more than five years.

Section 1241a-3. *Penalty if injury results; want of malice; personal liability.* If any injury shall result to the person or property of any person or persons, by reason of any unlawful acts denounced in the preceding section of this act, the person or persons engaged or participating, or any one of them, or any one aiding or abetting such unlawful act, shall be guilty of a felony, and upon conviction shall be confined in the state penitentiary not less than one nor more than fifteen years, unless death should result, in which case the penalty for such offense shall be as now prescribed by law. It shall be no mitigation of the offense for any one, upon his trial for a violation of the provisions of this section, that he may have acted through heat or passion, or that he may have acted without malice, and the judge trying the case shall so instruct the jury in writing. The persons composing such mob or riotous assemblage shall be individually and collectively liable in damages, actual and punitive to the owner or owners of property so damaged or destroyed, to be recovered by suit at law in any court having jurisdiction of the amount in controversy.

Section 1241a-4. *Duty of officers; prisoners may be armed.* Any officer or person having the custody of the person or persons charged with a public offense shall have the power, and it shall be his duty, to summon to his aid as many of the able-bodied male citizens of his county, between the ages of twenty-one and fifty years, as may be necessary for the protection of any such person or persons in his custody, and every such person who shall fail or refuse to obey such summons or verbal notice of such officer shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. Any officer having knowledge or reasonable grounds to believe that an effort will be made to rescue, injure or kill any person or persons in his custody charged with a public offense shall immediately provide such means as will be necessary to prevent any such unlawful act or acts; and any officer who may be in charge of any jail in this Commonwealth, in which is incarcerated any such person or persons charged with a public offense, when he has reasonable grounds to believe that said jail will be attacked by a mob or persons confederated or banded together for the purpose of inflicting violence upon any inmate of said jail, may in his discretion arm said threatened inmates with a view to their own protection.

Section 1241a-5. *Rewards by governor and county judge.* For the purpose of more effectually enforcing the provisions of this act the governor is hereby authorized to offer a reward for the apprehension and conviction of any offender of this law in any sum not exceeding five hundred dollars, and he shall be authorized to employ detectives, in his discretion, for the ferreting out and apprehension and conviction of any such offender, not exceeding two at any one time, provided the cost thereof shall not exceed three thousand dollars in any one year. The judge of the county court of any county in which this law is violated shall have power to offer a reward not exceeding two hundred dollars, or supplement the governor's reward, for the arrest and conviction of any person violating this act. The rewards offered by the governor shall be paid out of the treasury of this state; those offered by the county judge shall be paid by the county.

Section 2044. *County or circuit judge may order guards for safekeeping of prisoner; compensation.* When it is the opinion of the

county judge of the county in which a prisoner may be confined that the safekeeping of a prisoner confined under a charge of felony requires that a guard shall be kept over him, he shall make the order of record to that effect, and direct the number of guards to be summoned, by whom, and under whose control the same shall be placed; but if the circuit court be in session in such county, the judge thereof shall exercise the power conferred upon the county judge by this section. Each guard so summoned and performing duty shall be allowed the sum of one dollar ($1.00) per day, to be paid out of the county levy.

Section 2238. *Circuit or county judge may order; when.* If in any county of this Commonwealth there is no jail, or the same is insecure, or there is danger, or probable danger, that any person confined therein under any order or process of the circuit court, or held to answer any charge in said court, will be rescued therefrom by violence, the judge of the circuit court for said county shall, by an order made of record, if said court is in session, or if the court is not in session, by his written order, filed with the clerk of said court, direct that such person shall be transferred to the jail of the nearest county in which the jail is secure, and it shall be deemed that he can be safely kept. If the circuit judge is not in the county, the order of transfer may be made by the county judge, who shall deliver the same, or a copy thereof, to the circuit clerk for revision by the circuit court.

Section 2239. *Court or judge may order removal of all prisoners.* The court, or judge thereof, may, for any of the causes stated in the first section of this article, and in the same manner, make a general order requiring all persons confined, for the reasons in said section stated, in the jail of any county in his district, to be transferred to the nearest jail that is secure, and where they can be safely kept. Where any such order is made, and a copy of it furnished the jailer of the county designated, he shall receive all such prisoners.

Section 2240. *Removal; how effected; compensation of officer; guards allowed; effect of order removing; bail.* Where an order is made as directed by the former sections of this article, the sheriff, or if there is no sheriff, the coroner, shall, immediately upon the

receipt of a copy of the order of the judge or court, transfer the prisoners to the jail of the county designated in the order. He shall deliver to the jailer of said county at the jail the prisoner and the copy of said order, and take from a receipt for the prisoner, which he shall return to the clerk's office of the circuit court of the county from which the removal was made. The clerk shall file the same amongst the records of his office. The jailer shall receive the prisoners, and them safely keep, until properly discharged; and if he fail, neglect or refuse to do so, he and his sureties shall be liable in the same manner and to the same extent, as if the persons had been regularly committed by an order of the circuit court of his county; and shall receive the same fees, to be paid as like fees are now, by law, paid for the like service. The officer conveying the prisoners to the jail designated, and such guards as the judge or court may direct him to take, not exceeding the number of guards allowed in taking convicts to the penitentiary, shall receive the same compensation and mileage that they are now allowed by law for taking convicts to the penitentiary, to be allowed by the circuit court or judge directing the transfer, and paid out of the state treasury, unless there was no jail in the county, or it was rendered insecure by reason of the failure of the county court to keep it in the requisite condition, then it shall be paid out of the county levy of the county, and the court in making the allowance shall state in the order out of which fund it shall be paid. The order of the court or judge directing the transfer shall be conclusive evidence that the transfer was proper, and to the right jail, and shall be a justification to the jailer for holding any such prisoner in any action against him for false imprisonment. A circuit judge shall have jurisdiction to hear applications for bail and to grant the same, if the case is bailable in the manner now prescribed by law.

Section 2240a-1. *Persons in custody threatened with violence; removal to penitentiary for safekeeping; procedure; officers' expenses, how paid.* That if a person or persons are in custody of an officer and charged with one or more crimes, and there exists threatened violence or intense feeling and public indignation

against the person or persons so charged, and in the opinion of the circuit judge who presides in the district in which the county is located which has jurisdiction of the offense or offenses so charged the person or persons cannot be safely kept in jail in said county, said circuit judge by and with the consent of the governor may order such persons or persons removed for safekeeping to the state reformatory at Frankfort or the Kentucky state penitentiary at Eddyville, whichever of the places is nearest and most convenient to the county having jurisdiction of the offense or offenses charged, and in the absence of the circuit judge from said county the county judge of said county shall exercise the powers herein conferred upon the circuit judge of said district. The officer or officers who shall remove such person or persons shall be entitled to his or their actual expenses, including the actual expense of the transfer of the prisoner or prisoners, in making said removal, and in addition thereto a fee of $5.00 per day for himself and $2.50 per day each for not exceeding two guards; the claim for fees and expenses to be presented to the circuit court of the county having jurisdiction, for approval, to be paid out of the general expense fund of the state in the event the person or persons be charged with a felony, and such expense to be paid by the fiscal court of the county having jurisdiction in the event the person or persons be charged with a misdemeanor.

Section 2240a-2. *Expenses during incarceration, by whom paid.* The claim for keeping and boarding said person or persons at the state reformatory or state penitentiary shall be paid the state board of charities and corrections by the Commonwealth provided the person or persons be charged with felony, and such expense for keeping and boarding such person or persons shall be paid by the fiscal court of the county having jurisdiction in the event such person or persons be charged with a misdemeanor. The fees now provided by law for keep and board of such person or persons shall be paid as herein provided.

Section 2240a-3. *Prior law not affected.* This act shall not in any way or manner affect or repeal any portion of the present law authorizing the transfer of a person or persons charged with a crime to other county for safekeeping.

Louisiana

La. Const. & Stat. (Wolff, 1920)

Page 1657. Whenever it shall be established to the satisfaction of any Judge or Justice of the Peace, exercising jurisdiction in any parish of this State, that the jail of the parish is unsafe or unfit for the security of prisoners, it shall be the duty of the Judge or Justice of the Peace to issue his writ to the sheriff or other officer of the parish, commanding him to convey any prisoner whom he may have in custody to the nearest jail in any adjoining parish, in a safe condition, the prisoner there to remain until the jail of the first-mentioned parish shall be repaired, until trial, or until he may be discharged by due course of law; and it shall be the duty of the sheriff of the parish to which the prisoner shall be conveyed to keep the said prisoner safe and secure and subject to all judicial orders or decrees issuing from the parish from which the prisoner may have been sent, for which the said sheriff shall receive the same compensation as is allowed by law in other cases, to be paid by the parish from whence the prisoner was sent.

Maine

Me. Rev. Stat. (1930)

Chapter 134-20. When the injury to any property described in the preceding section ("dwelling-house, building, ship or vessel") amounts to fifty dollars or more, the town where such property is situated shall indemnify the owner thereof for three-fourths of the value of such injury, to be recovered in an action on the case, if he uses all reasonable diligence to prevent such injury, and to procure the conviction of the offenders; and the town paying such sum may recover it in an action on the case, against the persons doing the injury.

Chapter 94-46. *Upon application, transfer of prisoners when jail is adjudged unfit or insecure.* Whenever complaint is made on oath to a justice of the superior court that any jail is unfit for occupation, or is insufficient for the secure keeping of any person charged with crime and committed to await trial, or under sentence, he shall cause not less than three day's notice of such complaint to be given to the jailer or sheriff of the county, to appear

at the time and place fixed in such notice, and if on examination the matter complained of, is found true, he may issue his warrant for the transfer of such prisoner at the expense of said county, to any jail where he may be more securely kept. And if by fire or other casualty any jail is destroyed or rendered unfit for use, any justice of the superior court may, upon being notified by the county attorney of the county where such jail was or is located, issue his order to the sheriff and his deputies and constables of said county to cause all prisoners, who might be liable to imprisonment in said county, to be imprisoned in the jail of some adjoining county, said order to be printed in the newspapers of said county.

Maryland

Md. Ann. Code (Bagby, 1924)

Article 82, p. 1. If any county or incorporated town or city of this State, any church, chapel or convent, any dwelling house, any house used or designed by any person or body corporate as a place for the transaction of business or deposit of property, any ship, ship yard or lumber yard, any barn, stable or other outhouse, or any articles of personal property shall be injured or destroyed, or if any property therein shall be injured or taken away, injured or destroyed by any riotous or tumultuous assemblage of people, the full amount of the damage so done shall be recoverable by the sufferer or sufferers by suit at law against the county, town or city within whose jurisdiction such riot or tumult occurred.

2. No such liability shall be incurred by any county, incorporated town or city, unless the authorities thereof shall have had good reason to believe that such riot or tumultuous assemblage was about to take place, or having taken place, shall have had notice of the same in time to prevent said injury or destruction, either by its own police or with the aid of the citizens of such county, town or city, it being the intention of this article that no such liability shall devolve upon such county, town or city, unless the authorities having notice have also the ability of themselves, or with their own citizens, to prevent said injury; and all causes of action under section 1 shall be prosecuted within the period of three years from the time of accrual of the same.

3. In no case shall indemnity be recovered when it shall be satisfactorily proved that the civil authorities and citizens of said county, town or city, when called on by the civil authorities thereof, have used all reasonable diligence and all the powers intrusted to them for the prevention or suppression of such riotous or unlawful assemblages.

4. In any suit instituted under this article, the plaintiff may declare generally and give the special matter in evidence.

Massachusetts

Mass. Gen. Laws (1921)

Chapter 269-8. If property of the value of fifty dollars or more is destroyed or if property is injured to that amount by twelve or more persons who are riotously or tumultuously assembled, the town within which the property was situated shall, if the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders, be liable to indemnify the owner thereof in part to the amount of three-fourths of the value of the property destroyed or of the amount of such injury thereto, and may recover the same against any or all of the persons who destroyed or injured such property.

Michigan

Mich. Comp. Laws (1929)

Chapter 242-7. If in any county there shall not be a jail, or the jail erected shall become unfit or unsafe for the confinement of prisoners, or shall be destroyed by fire or otherwise, the circuit judge of the circuit court, or any circuit court commissioner for such county, and in the upper peninsula, the district judge of the district court for such county, shall by an instrument in writing to be filed with the clerk of the county, designate the jail of some other county for the confinement of the prisoners of such county; which shall thereupon to all intents and purposes, except as herein otherwise provided, become the jail of the county for which it shall have been so designated.

Minnesota

Minn. Stat. (Mason, 1927)

Section 10036. *Lynching defined.* Lynching is the killing of a human being, by the act or procurement of a mob.

Section 10037. *Damages may be recovered.* Whenever any person shall be lynched, the county in which said lynching occurred shall be liable in damages to the dependents of the person lynched in a sum not exceeding seven thousand five hundred dollars to be recovered in a civil action.

Section 10038. *Officers guilty of malfeasance in certain cases.* Any sheriff, deputy sheriff or other officer having the custody of any person whom it is sought by a mob to take from his custody who shall fail or neglect to use all lawful means to resist such taking, shall be deemed guilty of malfeasance and shall be removed from office by the governor in the manner and upon the same procedure as is provided by law for the removal from office of County Officers guilty of malfeasance or nonfeasance in the performance of their official duties.

Mississippi

Miss. Code Ann. (1930)

Section 1295. *Removal of prisoners to jail of another county.* When the defendant is not entitled to bail, or where he fails to give bail, and the jail of the county in which the offense is committed, or where the case stands for trial is, in the opinion of the committing officer or of the court having jurisdiction of the case, or of the presiding judge, insufficient for the safekeeping of the prisoner, or when the circuit judge shall think it expedient, on grounds of public policy, so to do, it shall be the duty of the officer or court, or circuit judge, to make an order for the removal of the accused to the most convenient and safe jail of some convenient county there to be kept until the court shall sit for the trial of the offender; and it shall be the duty of the sheriff of the county to which the prisoner is so removed, to receive and safely keep him, according to the order of the court or officer having jurisdiction thereof; and it shall further be the duty of said sheriff to have the body of the defendant, without further order, before the circuit

court of the proper county, at its next term thereafter, on the first day of the term, unless he shall have been discharged by due course of law; and the county in which the offense is committed, or where the case stands for trial, shall pay all the expenses of such removal and safekeeping and return of the prisoner for trial.

Section 3312. *Guard for jail.* If the jail be insufficient, or there be danger of the escape, lynching or rescue of any prisoner therein, or there shall be no jail, the sheriff may summon a sufficient guard to secure such prisoner or to protect the jail, so long as the same may be necessary, and no longer; and the circuit court, upon due proof, may allow to each guard not more than two dollars for each day and night he may have been employed as guard, or at this rate for a quarter time, to be paid on the order of the court, when the issuance of a warrant therefor shall be directed by the board of supervisors, out of the county treasury; but this section shall not authorize the employment of permanent guards for the jail, but only in an emergency, when prisoners cannot be removed to a secure jail, and are required to be kept for a time in the jail of the county.

Missouri

Mo. Rev. Stat. (1919)

Section 12568. *Guard, when and how appointed.* Whenever any sheriff shall have in his custody any person or persons charged with any felony in this state, and the jail of his county shall be insufficient, or if there shall be no jail in his county, he may, with the sanction of the judge of the court having criminal jurisdiction for his county, or any two judges of county court of his county, employ a guard sufficient for the guarding and safekeeping of such prisoner or prisoners in his own county—the said guard not to exceed, however, in any instance, more than three persons.

Section 12569. *Expenses thereof.* The expenses of said guards are to be audited and paid as other county expenses.

Section 12570. *When jail of another county may be used.* It shall be lawful for the sheriff of any county of this state, when there shall appear to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other

county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the judge of the court for the county from whence said prisoner was brought.

Section 8673. *Liability of first and second class cities for damage by riots.* Any city of the first class or of the second class in which such acts shall be committed shall be liable to the person or persons whose property shall be destroyed or injured thereby for the value of the property so destroyed, or the damage thereto, and the same may be recovered by suit at law, without joining any person or persons with said city or town as defendants in said suit.

Montana

Mont. Rev. Code (Choate, 1921)

Section 12474. *When jail of a contiguous county may be used.* Where there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment, filed with the clerk, designate the jail of a contiguous county, for the confinement of the prisoners of his county, or any of them, and may at any time modify or annul the appointment.

Section 5086. *Cities and towns responsible for damages by mobs and riots.* Every city or town is responsible for injuries to real or personal property within its corporate limits, done or caused by mobs or riots.

Nebraska

Neb. Comp. Stat. (1929)

Chapter 148—Section 1. *Mob Defined.* A collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, or pretending to exercise correctional power over another person by violence and without authority of law, shall be deemed a "mob" for the purpose of this act. An act of violence resulting in death of the victim by a mob upon the body of any person shall constitute a "lynching" within the meaning of this act.

Section 2. *Victim May Recover.* The legal representative of a person taken from officers of justice by a mob and assaulted with whips, clubs, missiles, or in any other manner, which results in death, may recover, as hereinafter provided, a sum not to exceed one thousand ($1,000.00) dollars in damages from the county in which the assault is made.

Section 3. *Liability of County.* The legal representatives of the person dying from injuries received from lynching by a mob may recover against the county in which such injury occurred, a sum not to exceed one thousand ($1,000.00) dollars by way of damages for such unlawful killing. Such sum shall be applied to the maintenance of the family and the education of the minor children of such person so lynched, if any him survive, until such children are of legal age, and then the remainder of said sum, if any, shall be distributed to the survivors, share and share alike, the widow to receive an amount equal to a child's share. If there be no widow or minor children surviving such decedent, such share shall be distributed among the next of kin according to the laws of the distribution of personalty of an intestate. Such sum so recovered shall not be a part of the estate of such person lynched nor subject to any of his liabilities.

Section 4. *Recovery by Other Persons.* A person suffering death from a mob attempting to lynch another person shall come within the provisions of this act. His legal representatives, shall have a like right of action as one purposely injured or killed by such mob.

Section 5. *Action, when—where brought.* Actions for the recoveries provided for in this act must be commenced within two (2) years from the date of such lynching, and shall be brought in any court which has original jurisdiction for malicious assault.

Section 6. *Levy by Commissioners or Supervisors.* A certified copy of the journal of judgment served on the commissioners or supervisors of any county against which such recovery shall have been had, shall include therein the costs of the action, and in the next succeeding tax levy for such county, the amount of such recovery, interests and costs shall be a part of such levy.

Section 7. *Guardian of Minor Children.* If the decedent so lynched has minor children him surviving, the fund when re-

ceived from the county as referred to in the preceding section shall be turned over to a regularly appointed guardian. Such guardian shall administer such fund under the direction of the probate judge who shall allow not more than five hundred ($500.00) dollars for counsel fees in an action for such recovery.

Section 8. *Recovery by County.* The county in which a lynching occurs may recover the amount of the judgment and costs against it, as mentioned in the second preceding section, in favor of the legal representatives of a person killed or seriously injured by a mob from any of the persons composing such mob. A person present with hostile intent at such lynching shall be deemed a member of the mob and may be included as a party defendant in such action.

Section 9. *Recovery by County Whose Residents not Involved.* If a mob carries a prisoner into another county, or comes from another county to commit violence on a prisoner brought from such county for safekeeping, the county in which the lynching is committed may recover the amount of the judgment and costs from the county from which the mob came, unless there was contributory negligence on the part of the officials of such county in failing to protect such prisoner or disperse such mob.

Section 10. *Liability of Individuals.* This act shall not relieve any person concerned in lynching from prosecution for homicide or assault as elsewhere provided by law or from civil liability.

Section 11. If any section or clause of the ten (10) preceding sections shall be held invalid or unconstitutional, such finding shall not affect the validity of any other parts or portions thereof that may be otherwise valid.

Section 12. *Emergency.* Whereas, an emergency exists, this act shall take effect from and after passage and approval according to law.

Nevada

Nev. Comp. Laws (Hillyer, 1929)

Section 7612. *Prisoner may be removed to other jail, when—application to governor.* Whenever from any sufficient cause the sheriff shall think it expedient that the prisoners be removed from

the jail, in his county, an application in writing, to the governor of the state, by the sheriff, the governor may order said prisoners to be removed to some other jail, anywhere within the state, there to be detained in the same manner, and by the same process as in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

New Hampshire

N. H. Pub. Laws (1926)

Chapter 397-17. *Removal of Prisoners.* Whenever, on account of the prevalence of disease, or the rebuilding or repairing a jail or other cause, the sheriff shall think it expedient that the prisoners be removed therefrom, any two justices of the superior court may order their removal to some other jail in the same or another county, there to be detained, in the same manner and by the same process as in the jail from which they were so removed, until removed by similar process or discharged according to law.

Chapter 397-30. Any person confined in a county jail, house of correction, state prison or other place of detention may, under such precautions and for such time and purpose as any justice of the superior court or the governor may order, be temporarily taken by some regular or specially authorized officer from such place of detention because of his own extremely critical illness, or the imminently approaching death, or the funeral of a member of his immediate family, or for such imperative and extraordinary purpose as shall be deemed justifiable and humane by said justice, or the governor, to whom application is made.

Chapter 42-41. *Town's Liability.* If persons, unlawfully, riotously and tumultuously assembled, shall injure or destroy any property, real or personal, the town within the limits of which such property is situated shall be liable to the owner thereof for the damages suffered by him, in an action on the case.

New Jersey

N. J. Comp. Stat. (1910 and Supp. 1924)

Section 170. *Transfer of prisoners from jail of one county to jail of adjoining county; expenses of keep, etc.* In all cases where the

jail now used as a common jail or penitentiary, for the confinement of prisoners in any county, shall become insecure and inadequate to the needs of such county by reason of repairs, alterations, or additions thereto being in progress, or by reason of a new jail for such county being in process of erection or construction, or for any other reason, the jails or penitentiaries of the counties adjoining to such county shall be and are hereby also constituted jails and penitentiaries for the confinement of prisoners of such counties as contain insecure or inadequate jails or penitentiaries, until such time as secure and adequate jails or penitentiaries shall be erected or constructed therein; and the courts of oyer and terminer, the courts of quarter sessions, and all magistrates of such counties as contain such condemned, insecure or inadequate jails or penitentiaries may respectively, in their discretion, when they deem it necessary, direct and order any prisoner or prisoners under sentence or charged with any criminal offense, to be confined in the jail or penitentiary of any such adjoining county, and the keepers thereof are hereby required to receive and safely keep all such prisoners in the same manner as they are by law required to keep the prisoners of their respective counties, until he, she, or they shall be demanded, under authority of law, by the proper officer or officers of the county from where they were committed, or be otherwise discharged by due course of law; and the keepers of said jails or penitentiaries shall be entitled to demand and receive from the board of chosen freeholders of the county from which such prisoners shall be committed such fees as are or shall be allowed by law in such cases, and such compensation for the board and care of such prisoners as the board of chosen freeholders of the county wherein such prisoners are confined shall deem just and reasonable.

Riots 5, page 4381. *Compensation for damage by riot, etc., liability of city or county.* That whenever any buildings or other real or personal property shall be destroyed or injured, in consequence of any mob or riot, the city in which the same shall occur, or if not in a city, then the county in which such property was situated, shall be liable to an action, by or in behalf of the party whose property was thus destroyed or injured, for the damages sustained by reason thereof.

Riots 6. *Damages against city or county; how collected.* That such action or actions may be brought and conducted in the same manner that other actions may be prosecuted by law, and the judgment may be received in the manner now provided for in civil actions; and whenever any final judgment shall be recovered against any such city or county in any such action, such judgment shall be paid and collected as other judgments against such city or county.

Riots 7. *Recovery of damages against city or county; notification of officials; their duty; expenses.* No person or corporation shall be entitled to recover in any such action if it shall appear upon the trial thereof that such destruction or injury of property was occasioned, or in any manner aided, sanctioned or permitted by the carelessness or negligence of such person or corporation; nor shall any person or corporation be entitled to recover any damages for any destruction or injury of property as aforesaid, unless such party shall have used all reasonable diligence to prevent such damage, and shall have notified the mayor of such city, or the sheriff of such county, immediately after being apprised of any threat or attempt to destroy or injure his or their property by any mob or riot of the facts brought to his knowledge; and upon the receipt of such notice it shall be the duty of such officer to take all legal means to protect the property attacked or threatened, and all expenses incurred by said officer in the performance of his duty as aforesaid shall be paid by the county collector of the county in which said property is situated, upon the approval of the judge of the court of common pleas of said county.

Riots 8. *Actions against rioters.* That nothing in this act shall be construed to prevent any person or corporation whose property has been injured or destroyed by any mob or riot from having or maintaining an action against each and every person engaged or in any manner participating in such riot or mob.

Riots 9. *Limitation of actions against city or county.* That no action shall be maintained against any city or county, under the provisions of this act, unless the same shall be brought within three months after the loss or injury; provided, if the parties bringing the suit be in ward, as of unsound mind, or minors, or under coverture, this limitation shall not apply.

Riots 10. *Agreement of city or county with claimant for property destroyed or injured.* That it shall be lawful for any city, by its common council, and for any county, by its board of chosen freeholders, whenever such city or county shall be liable to an action under the provisions of this act, to agree in writing with the owner of the property destroyed or injured, upon the sum to be paid by such city or county, without action; and the sum agreed upon shall be paid as claims of a general nature against such city or county.

Riots 11. *Recovery over from rioters by city or county.* That any city or county which shall pay any sum under the provisions of this act, whether paid upon judgment or settlement, may recover the full value of the property destroyed or injured, in an action against any or all of the persons in any manner engaged in such destruction or injury; and in such action the judgment recovered against the settlement made by such city or county, may be offered and shall be received as prima facie evidence of the value of the property destroyed or injured.

Section 130-1. *Definition of mob.* 1. Any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a "mob."

Section 130-2. *Definition of serious injury.* 2. The term "serious injury," for the purposes of this act, shall include any injury to property which shall cause damage to the owner thereof, or any injury to the person which shall temporarily or permanently disable the person injured from earning a livelihood.

Section 130-3. *Penalty.* 3. Any person or persons who shall compose a mob, with the intent to inflict damage or injury to the person or property of any individual charged with a crime, or, under the pretense of exercising correctional powers over such person or persons by violence, and without authority of law, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and may be imprisoned in the county

jail not less than thirty days nor to exceed twelve months for each and every offense.

Section 130-4. *Penalty.* 4. Any person or persons composing a mob under the provisions of this act, who shall by violence inflict material damage to the property or serious injury to the person of any other person upon the pretense of exercising correctional powers over such person or persons, by violence and without authority of law, shall be deemed guilty of a felony, and shall suffer imprisonment in the penitentiary not exceeding five years; and any person so suffering material damage to property or injury to person by a mob shall have an action against the county or city in which such injury is inflicted, for such damages as he may sustain, to an amount not exceeding five thousand dollars.

Section 130-5. *Dependents may sue for damages.* 5. The surviving spouse, lineal heirs, or adopted children of any such other person or persons who, before the loss of life, were dependent for support upon any other person who shall hereafter suffer death by lynching at the hands of a mob, in any county or city of this State, may recover from such county or city damages for injury sustained by reason of the loss of life of such person, to a sum not exceeding five thousand dollars.

Section 130-6. *Penalty in case sheriff fails to perform duty—sheriff may be reinstated upon order of Governor.* 6. If any person shall be taken from the hands of a sheriff or his deputy, having such person in custody, and shall be lynched, it shall be prima facie evidence of failure on the part of such sheriff to do his duty, and upon the fact being made to appear to the Governor, he shall publish proclamation declaring the office of such sheriff vacant, and his office shall thereby and thereafter immediately be vacated, and the coroner shall immediately succeed to and perform the duties of sheriff until the successor of such sheriff shall have been duly elected or appointed, pursuant to the existing law providing for the filling of vacancies in such office, and such sheriff shall not thereafter be eligible to either election or reappointment to the office of sheriff; provided, however, that such former sheriff may, within ten days after such lynching occurs, file with the Governor his petition for reinstatement to the office of sheriff,

and shall give ten days' notice of the filing of such petition to the prosecuting attorney of the county in which such lynching occurred, and also to the Attorney-General. If the Governor, upon hearing the evidence and argument, if any presented, shall find that such sheriff has done all in his power to protect the life of such prisoner and performed the duties required of him by existing laws respecting the protection of prisoners, then such Governor may reinstate such sheriff in his office and shall issue to him a certificate of reinstatement, the same to be effective on the day of such order of reinstatement, and the decision of such Governor shall be final.

New Mexico

N. M. Stat. Ann. (Courtright, 1929)

Number 75-118. *Transferring prisoner for safe-keeping—Payment of expense.* Whenever the public welfare or the safe custody of a prisoner shall require any district judge in the state of New Mexico in his discretion may order any person in the custody of the sheriff of any county in the district of the said judge, to be removed to another county jail, or to the state penitentiary, or to any other place of safety, when, in the opinion of the said district judge, it is advisable that such person or persons shall be removed for any purpose whatsoever.

That where a person, on the order of any district judge has been placed in the state penitentiary or the county jail for safekeeping, the expense incurred by said penitentiary or the sheriff of any county for the maintenance of said prisoner, shall be borne by the county from which said prisoner has been ordered, and said bill of expense shall be made a preferential bill of expense and shall be paid in full before any bill, fees or salaries of such counties are paid: Provided, however, that the said state penitentiary or sheriff shall only charge for the maintenance of said prisoner the legal rate now allowed by law.

Number 75-125. *Assault on jail—Duty of Sheriff.* Whenever any sheriff or his deputy or any constable within the several counties of this state shall receive information that an assault is intended to be committed on the jail of his county by anybody or bodies, troop or troops, gang or gangs of men, for the purpose of

procuring the homicide or escape of any or several of the prisoners which may be in the jail, delivered to the sheriff by a legal process from any tribunal or court, sentenced to suffer any punishment for a violation of the laws of the United States, or laws of this state, or waiting to be tried before any court, it is hereby made the duty of the sheriff or his deputy to summon the aid of the people, armed, to assist him in the apprehension of the said seditious persons, and the fulfillment of the provisions of sections 3056 to 3059 (75-125 to 75-128) inclusive.

Number 75-126. *Refusing to assist sheriff.* If any person so appointed by the sheriff or his deputy, as provided in the preceding section, shall neglect, refuse, or disobey the order of the sheriff or his deputy, the person or person so neglecting, upon conviction, shall suffer a fine of not less than ten dollars nor more than fifty dollars, or imprisonment for a period of not more than one year nor less than three months, or both, at the discretion of the court taking cognizance of the case.

Number 75-127. *Arrest of persons assaulting jail.* When any person or persons, body or bodies, troop or troops, gang or gangs of seditious men, who may make or endeavor to make assaults upon the jails or places of confinement, wherein prisoners may be found, under the custody of the law, if such persons, or any of them are known by the sheriff or his deputy, such sheriff or his deputy is hereby authorized to summon the aid of the people to take, imprison and secure, by confinement or otherwise, all and everyone of said seditious persons, and the sheriff or his deputy shall present them at the following term of the court to be tried according to law.

Number 75-128. *Assaulting jail—Penalty.* If any person or persons, body or bodies, troop or troops, gang or gangs of armed men, shall endeavor to enter or shall enter by force and with violence into any jail in the state, for the object expressed in section 3056 (75-125) and if any jailer, guard, or prisoner, shall be killed, wounded or hurt in said tumult, or if the escape of any prisoner or prisoners be effected from the custody of the law, by said seditious persons, the offense shall be punished in the following manner:

First—In the first case, if the death of any jailer or jailers be committed by said gangs of seditious persons, the persons so offending, upon conviction, shall be punished with death.

Second—If any jailer, guard, or prisoner be wounded or hurt in the tumult by such seditious gangs, said persons so offending, upon conviction thereof, shall be fined in a sum not exceeding five hundred nor less than fifty dollars, or imprisoned for a period not more than three years nor less than six months at the discretion of the court; and

Third—If the result of said tumult be that one or more prisoners shall escape from the jail in which they may be under the custody of the law, the person so offending, upon conviction, shall suffer the same punishment as the prisoner or prisoners sentenced to the penitentiary or jail, for the longest period; or if the prisoners escape before being tried, shall suffer and be imprisoned for a period of not less than one year, nor more than ten years, at the discretion of the court.

New York

Section 71. *Liability for damages by mobs and riots.* A city or county shall be liable to a person whose property is destroyed or injured therein by a mob or riot, for the damages sustained thereby, if the consent or negligence of such person did not contribute to such destruction or injury, and such person shall have used all reasonable diligence to prevent such damage, shall have notified the mayor of the city, or sheriff of the county, of a threat or attempt to destroy or injure his property by a mob or riot, immediately upon acquiring such knowledge, and shall bring an action therefor within three months after such damages were sustained. A mayor or sheriff receiving notification of a threat or attempt to destroy or injure his property by a mob or riot, shall take all lawful means to protect such property; and if he shall neglect or refuse, the person whose property shall be destroyed or injured, may elect to bring his action for damages against such officer instead of the city or county.

North Carolina

N. C. Code Ann. (Michie, 1931)

Section 1266. *Cost of investigating lynchings.* In all cases of investigation and trial of the crime of lynching, the entire cost incurred in the prosecution, unless paid by the person or persons convicted, shall be paid by the county wherein the crime shall have been committed. And whenever any solicitor goes to a county to investigate a crime of breaking or entering a jail for the purpose of lynching, the county where such crime is committed shall pay the solicitor the sum of one hundred dollars for making the investigation.

Section 3945. *Prevent entering jail for lynching; county liable.* When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county wherein whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this state.

Section 4377. *Refusal of witness to appear or to testify in investigations of lynchings.* If any person summoned as a witness in the investigation of a charge of lynching shall willfully fail to attend as a witness in obedience to the process served on him, or if, after being sworn, he shall refuse to answer questions pertinent to the matter being investigated before any tribunal, he shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Section 4600. *In case of lynching.* The superior court of any county which adjoins the county in which the crime of lynching shall be committed shall have full and complete jurisdiction over the crime and the offender to the same extent as if the crime had

been committed in the bounds of such adjoining county; and whenever the solicitor of the district has information of the commission of such a crime, it shall be his duty to furnish such information to the grand juries of all adjoining counties to the one in which the crime was committed from time to time until the offenders are brought to justice.

Section 4636. *Exclusion of bystanders in trials for rape.* In the trial of cases for rape and of assault with the intent to commit rape, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case; and upon the preliminary hearing before a justice of the peace of the offenses above named, that officer may adopt a like course.

Section 4570. *Investigation in case of lynching.* Whenever the solicitor of any judicial district ascertains that the crime of lynching has been committed in any county in his judicial district, it is his duty to go to such county at the earliest possible moment, and at once institute proceedings for the investigation of the crime before the coroner of the county, some judge of the superior court, or justice of the peace, and for the apprehension of the offender. In the performance of this duty he shall cause to be issued subpoenas or other process to compel the attendance of witnesses and examine such witnesses on oath as to their knowledge or information touching the crime being investigated. In all cases where, upon preliminary investigation, it appears probable that any person is guilty of the crime charged, it shall be the duty of the coroner, judge or justice before whom the case is heard to bind such person, with good security, for his appearance at the next ensuing term of the superior or criminal court of some county adjoining the county in which the crime was committed for trial, and in default of bail to commit him to the jail of such adjoining county for safekeeping, and all necessary witnesses shall be recognized to appear at such term as witnesses for the state.

Section 4571. *Witnesses in lynching not privileged.* In all investigations before a justice of the peace, coroner, judge, grand jury, or court and jury, on the trial of the cause, as authorized by the

preceding section or under existing law, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his answer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself; but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal or criminal prosecution, and he shall, when so examined as a witness for the state, be altogether pardoned of any and all participation in any crime arising under the provisions of the preceding section, or under existing law, concerning which he is required to testify.

Section 4572. *Proceedings certified to court; used as evidence.* All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the magistrate taking the same to the court at which the witnesses are bound to appear, within twenty days after the taking of such examinations and recognizances: Provided, that any criminal case tried within twenty days before the sitting of criminal court shall be returned on Saturdays before the court convenes. The examinations taken and subscribed as herein prescribed may be used as evidence before the grand jury, and on the trial of the accused, provided he was present at the taking thereof and had an opportunity to hear the same and to cross-examine the deposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement or connivance of the defendant has removed from the state, or is of unsound mind.

Section 4573. *Penalty for failing to return.* If any magistrate shall refuse or neglect to return to the proper court any such examination or recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided by law.

Ohio

Ohio Code Ann. (Throckmorton, 1929)

Section 6278. *"Mob" and "lynching" defined.* A collection of people assembled for an unlawful purpose and intending to do damage or injury to any one, or pretending to exercise correc-

tional power over other persons by violence and without authority of law, shall be deemed a "mob" for the purpose of this chapter. An act of violence by a mob upon the body of any person shall constitute a "lynching" within the meaning of this chapter.

Section 6279. *"Serious injury" defined.* The term "serious injury," for the purpose of this chapter, shall include such injury as permanently or temporarily disables the person receiving it from earning a livelihood, by manual labor.

Section 6280. *Damages in case of assault.* A person taken from officers of justice by a mob, and assaulted with whips, clubs, missiles or in any other manner, may recover, as hereafter provided, a sum not to exceed one thousand dollars as damages from the county in which the assault is made.

Section 6281. *Damages in case of lynching.* A person assaulted and lynched by a mob may recover from the county in which such assault is made, a sum not to exceed five hundred dollars; or, if the injury received therefrom is serious, a sum not exceeding one thousand dollars; or, if such injury result in permanent disability to earn a livelihood by manual labor, a sum not to exceed five thousand dollars.

Section 6282. *Damages recoverable by legal representative of victim of lynching.* The legal representative of a person dying from injuries received from lynching by a mob, may recover of the county in which such injury occurred, a sum not to exceed five thousand dollars damages for such unlawful killing. Such sum shall be applied to the maintenance of the family and education of the minor children of such person so lynched, if any survive him, until such children are of legal age, and then be distributed to the survivors, share and share alike, the widow receiving an amount equal to a child's share. If there be no widow or minor children surviving such decedent, such sum shall be distributed among the next of kin according to the laws of the distribution of the personalty of an intestate. Such sum so recovered shall not be a part of the estate of such person so lynched, nor be subject to any of his liabilities.

Section 6283. *Person suffering death or injury by mob trying to lynch another.* A person suffering death or injury from a mob attempting to lynch another person shall come within the provisions of this chapter. He or his legal representatives shall have a like right of action as one purposely injured or killed by such mob.

Section 6284. *Limitations of action.* Actions for the recoveries provided for in this chapter must be commenced, within two years from the date of such lynching, in any court having original jurisdiction of an action for damages for malicious assault.

Section 6285. *Order to include recovery and costs in tax levy.* An order to the commissioners of a county, against which such recovery is had, to include it with the costs of action, in the next succeeding tax levy for such county, shall be a part of the judgment in every such case.

Section 6286. *Guardians' custody, etc.; fees.* If the decedent so lynched has minor children surviving him, the fund shall be turned over to a regularly appointed guardian. Such guardian shall administer such fund under the direction of the probate judge, allowing not more than five hundred dollars for counsel fees in the action for such recovery.

Section 6287. *County's right of action against member of mob.* The county, in which a lynching occurs, may recover the amount of a judgment and costs against it in favor of the legal representatives of a person killed or seriously injured by a mob from any of the persons composing such mob. A person present, with hostile intent, at such lynching, shall be deemed a member of the mob and be liable to such action.

Section 6288. *County's right of action against another county.* If a mob carries a prisoner into another county, or comes from another county to commit violence on a prisoner brought from such county for safekeeping, the county in which the lynching is committed may recover the amount of the judgment and costs from the county from which the mob came, unless there was contributory negligence on the part of officials of such county in failing to protect such prisoner or disperse such mob.

Section 6289. *Non-relief from prosecution.* This chapter shall not relieve a person concerned in such lynching for prosecution for homicide or assault for engaging therein.

Section 12831. *Breaking into jail or attacking officer for the purpose of lynching.* Whoever breaks or attempts to break into a jail or prison, or attacks or attempts to attack an officer with intent to seize a prisoner for the purpose of lynching him, shall be imprisoned in the penitentiary not less than one year nor more than ten years.

Oklahoma

Okla. Comp. Stat. Ann. (Bunn, 1921)

Section 6340. *Jail guards.* In case of emergency, the sheriff may appoint additional jail guards with the approval of the board of county commissioners. In such case the salary of such guard shall not be in excess of the salary of the jailer provided for him.

Pennsylvania

Pa. Stat. (West, 1920)

Section 486a-1. *Persons accused of or arrested for crime entitled to equal protection of law.* Whenever any criminal prosecution shall have been instituted, or any warrant of arrest shall have been issued or any arrest shall have (been) made or attempted with the purpose and intent of criminal prosecution, in the courts of any county against any person within the jurisdiction of the county, whether he be a citizen of the United States or not, and such person shall appeal, as hereinafter provided, for protection of the government upon the ground that he has reasonable cause to apprehend that he will be denied the equal protection of the laws by the county within whose jurisdiction he is, or by any officer or inhabitant of such county, such person shall be entitled to the protection of the courts and officers of the State, to the end that the protection guaranteed by the Constitution of this State may be given. (1923)

Section 486a-2. *Petition filed with prothonotary of Superior Court; contents; warrant to State police to produce petitioner.* Any person within the jurisdiction of any county, charged with a felony or other crime, who shall file with the prothonotary of

the Superior Court of this Commonwealth a duly verified petition, showing (1) that he is charged with, or has been arrested for, the alleged commission of or participation in some felonious or criminal act, the nature of which shall be set out in his petition; (2) that he has reason to apprehend that because of his race, nationality, or religion, which shall be specifically stated in his petition, the petitioner is likely to be denied the equal protection of the laws either by the courts, the officers of the law, or other inhabitants of the county, within whose jurisdiction he is; and (3) that some other person or persons of his race, color, nationality, or religion, within the jurisdiction of such county, charged with an offense similar to that with which the petitioner is charged, have been put to death without trial or brutally assaulted or otherwise maltreated, or have been denied trial by due course of law, in the courts of such county, upon similar charges, because of the race, color, nationality, or religion of such person or persons—he shall be entitled to and shall receive the protection of all officers of the Commonwealth. The duly verified petition, above described, may be verified and filed by the person in jeopardy, as above described, or by another person in his behalf. Upon the filing of such petition with the prothonotary of such court, it shall be the duty of such prothonotary to issue forthwith, to a member of the State police, a warrant commanding him to bring the body of such petitioner into court for hearing upon such petition.

Section 486a-3. *Duty of State police.* It shall be the duty of such State policeman, upon receipt of such warrant, to arrest and detain the petitioner, and to protect him from assault or injury, and in case such petitioner is in the custody of any officer or person upon a warrant to hold petitioner for prosecution in any county court for felony or other crime, such State policeman shall take such petitioner from such official, receipting to him for the body of the petitioner.

Section 486a-4. *Summary hearing in Superior Court; disposition of body of petitioner; trial in another county.* When said petitioner shall have been brought into said Superior Court, he shall be entitled to a summary hearing upon his petition before one of the judges thereof; and in case he has been taken from the custody of any officer, he shall, in event his petition is not sustained,

be surrendered by the State policeman to the officer from whom he had been taken, and if he has not been taken from the custody of any officer, he shall, in the event his petition is not sustained, be set at liberty, and the costs of the proceedings shall be taxed against him; in case the petition is sustained by the court, the petitioner shall be remanded to the custody of the Superintendent of State Police for protection, or committed to a proper penal institution, until petitioner may be tried in a court of quarter sessions of the peace or oyer and terminer of some other county, to be selected by the Superior Court, upon such indictment, information, or other charge as may have been or may be made or returned against him, and for the purpose of such trial, such court so selected shall have and possess jurisdiction to try and determine any and all proceedings, upon indictment or information, which may be removed from any other county court under this act.

Section 4682-5. *Resisting officer, etc.; executing warrant; penalty.* Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the Commonwealth, or other person duly authorized, in serving, or attempting to serve or execute, the warrant herein provided for; or shall assault, beat, or wound any officer, or other person duly authorized to serve the same, knowing or having reason to believe him to be such officer or other person so duly authorized, or any person lawfully in the custody of such officer, or other person so duly authorized in serving or executing any such warrant,—shall be fined not more than ten thousand dollars and imprisoned not more than ten years.

Section 4862-6. *Rescuing or taking from officer person held under warrant; penalty; killing person held under warrant; murder.* Whoever shall rescue, or attempt to rescue, take, or abduct, from the custody of any officer, or person lawfully assisting him, any person taken upon a warrant under the provisions of this act, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape or to be taken or abducted from the custody of such officer or other person; or shall harbor or conceal any person for whose arrest such a warrant has been issued, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person,—shall be fined not more than one thou-

sand dollars, or imprisoned not more than six months, or both; and in case the taking or rescue of any such person in custody, as aforesaid, shall be followed by the killing of the person so taken from custody, all persons engaged in such taking or abduction or killing, or in any way contributing thereto, shall be guilty of murder.

Section 486-a-7. *Death caused by mob violence.* The putting to death, within any county, of any person within the jurisdiction of the county by mob or riotous assemblage of three or more persons, openly acting in concert in violation of law, and in default of protection of such person by such county or the officers thereof, shall be deemed a denial to such person by such county of the equal protection of the laws, and a violation of the peace of the Commonwealth and an offense against the same.

Section 486a-8. *Persons participating in mob resulting in death; murder.* Every person participating in such mob or riotous assemblage by which such person is put to death, as described in the section immediately preceding, shall be guilty of murder.

Section 486a-9. *Forfeiture against counties; procedure.* Every county in which such unlawful putting to death occurs shall be subject to a forfeiture of ten thousand dollars, which may be recovered, by action therefor in the name of the Commonwealth, against such county for the use of the dependent family, if any, of the person so put to death, and, if none, for the use of the Commonwealth, which action shall be brought and prosecuted by the Attorney General in a court of common pleas of any county within the Commonwealth, other than the county in which such unlawful putting to death occurred. If such forfeiture is not paid upon recovery of judgment therefor, the court in which said judgment was recovered shall have jurisdiction to enforce payment thereof by extent of levy of execution upon any property of the county, or may compel the levy and collection of a tax therefor, or otherwise compel payment thereof by mandamus or other appropriate process; and every officer of such county, and every other person, who disobeys or fails to comply with any lawful order of the court in the premises shall be liable to punishment according to law as for contempt, and to any other penalty provided by law therefor.

Section 486a-10. *Forfeiture against several counties involved.* In the event any person so put to death, who shall have been taken from an officer in one county by a mob or riotous assemblage of three or more persons, shall have been taken in one county and transported to another before such killing shall have taken place, each and every county through which such murdered person shall have been transported, during the time intervening between his capture by such mob or riotous assemblage, shall be jointly and severally liable to the forfeiture hereinabove provided.

Section 486a-11. *Neglect of officers to perform required acts or duties; penalty.* Every officer having the duty or power of preservation or conservation of the peace at the time and place of any such putting to death, as described in section seven hereof, who, having reasonable cause to believe that the same is being or is to be attempted, neglects or omits to make all reasonable efforts to prevent the same; and every officer having the duty or power of prosecuting criminal offenses at such time and place, who neglects or omits to make all reasonable effort to prosecute to judgment, under the laws of this State, all persons participating in such mob or assemblage as hereinabove described, except such, if any, as have been or are held to answer therefor as hereinabove provided,— shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Section 486a-12. *Officer permitting person to be taken from his custody; penalty.* Every officer having the custody within a county of any person charged with, or held to answer for, any crime or offense who suffers such person to be taken from his custody by a mob or riotous assemblage of three or more persons, openly acting in concert in violation of law, with the purpose of putting such person to death or inflicting bodily violence upon him in default of protection of such person by such county, or the officers thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Section 486a-13. *Participants in mobs, etc., disqualified as jurors.* In any prosecution for any of the offenses defined herein, and in any action for forfeiture imposed as herein provided, every person who has participated in lynching, or in putting to death of, or of the infliction of great bodily violence upon, any person without authority of law, and every person who entertains or has expressed any opinion in favor of lynching, or in justification or excuse thereof, or whose character, conduct, or opinions have been or are such as in the judgment of the court may tend to disqualify him for the impartial and unprejudiced trial of the cause, shall be disqualified to serve as a juror, and the Attorney General in such action or prosecution shall be entitled to make full inquiry thereof, and to produce evidence thereon; and every person who refuses to answer any inquiry touching his qualifications on the ground that he may thereby criminate himself shall be disqualified as aforesaid.

Rhode Island

R. I. Gen. Laws (1923)

(6055) Section 10. Whenever any property of the value of fifty dollars or more shall be destroyed or be injured to that amount by any persons to the number of six or more unlawfully, routously, riotously or tumultuously assembled, the town or city within which said property was situated shall be liable to indemnify the owner thereof to the amount of three-fourths of the value of the property so destroyed or in an action of the case in any court proper to try the same, provided the owner of such property shall use all reasonable diligence to prevent its destruction or injury by such unlawful assembly and to procure the conviction of the offenders.

(6447) Section 8. All misconduct or deficiencies with regard to the treatment or condition of the prisoners shall be reported by the said commission to the general assembly, at its next session; all danger to the public safety or the safety of the prisoners from the insufficiency of the jail, apprehension of rescue, or the prevalence of disease shall be reported by the sheriff or said commission to the superior court, as well as to the general assembly.

(6448) Section 9. If, in the opinion of such court, it shall be expedient, from any of the causes mentioned in the preceding sec-

tion, that persons who would otherwise be committed to the jail in any county should be committed to the jail of some other county during the continuance of such causes, the court may direct all persons who would otherwise be commited to such jail to be committed to the jail of any other county, and there to be detained until remanded to the jail where they would otherwise have been committed by order of court, or discharged according to law; and upon notice of such direction, all courts shall conform every process of commitment thereto, and all committing officers shall commit prisoners accordingly.

(6449) Section 10. If, in the opinion of the superior court, it shall be expedient, from the insufficiency of the jail in any county, or the rebuilding or repairing of the same, the apprehension of rescue, the prevalence of disease, or other cause, to remove any prisoner or prisoners to the jail of any other county, upon application in writing to it by the sheriff or inspector of the jail, may make an order for such removal and issue a warrant therefor, and have such prisoner or prisoners confined in the jail of some other county, and allow to the officer or officers executing such order and warrant all proper costs and expenses thereof.

(6450) Section 11. Every prisoner or prisoners so removed shall be detained in the same manner and by the same process as in the jail from which they were removed, to be certified to the jailer by the removing officer, until remanded back by the order of the court, or discharged, according to law.

(6451) Section 12. Said court may order and cause to be established a nightly guard at any of the jails, whenever they shall deem it necessary for the public safety or the safety of the prisoners, and may continue the same for so long a time as they may deem proper, and allow the proper expense thereof.

South Carolina

S. C. Crim. Code (1922)
S. C. Civ. Code (1922)

(27) Section 27. *Penalty upon officer from whom prsioner is taken.* In the case of any prisoner lawfully in the charge, custody or control of any officer, State, County or Municipal, being

seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office, pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the prosecuting attorney within whose Circuit or county the offense may be committed to forthwith institute a prosecution against said officer, who shall be tried in such county in the same Circuit, other than the one in which the offense was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and the defense, shall be paid by the County Treasurer of the county in which the case originated, on a certificate issued by the Clerk and signed by the presiding Judge, showing the amount of said fee due the witness.

(934) Section 14. *Sheriff may impress a guard, and call out posse comitatus—Penalty for refusing to assist.* When any person accused of a capital offense shall be in custody, and the Sheriff, acting by himself or his regular deputy, shall have cause to suspect that such person may be unlawfully taken from his custody, or will probably effect his escape, he may impress a sufficient guard for securing and keeping safely such prisoner, so long as it may be his duty to keep said prisoner in jail, or in his custody. And the Sheriff by himself or his regular deputy shall have power to call out the *posse comitatus* to his assistance, whenever he is resisted, or has reasonable grounds to suspect and believe that such assistance will be necessary in the service or execution of process in any criminal case; and any person refusing to act as such guard, or to assist as one of the *posse comitatus* in the service or execution of such process, when required by the Sheriff, shall be liable to be indicted therefor, and upon conviction, shall be fined and imprisoned, at the discretion of the Court.

(5601) Section 7. *When county liable for damages for lynching —May recover from guilty parties.* In all cases of lynching when death insues the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exem-

plary damages of not less than two thousand dollars, to be recovered by action instituted in any Court of competent jurisdiction by the legal representatives of the person lynched, and they are hereby authorized to institute such action for the recovery of such exemplary damages. A county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any Court of competent jurisdiction, and is hereby authorized to institute such action.

Section 6. *Prisoner lynched through negligence of officer—Penalty on officer—County liable for damages.* In the case of any prisoner lawfully in the charge, custody or control of any officer, State, county or municipal, being seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the Prosecuting Attorney within whose Circuit or county the offense may be committed to forthwith institute a prosecution against said officer, who shall be tried in such county, in the same Circuit, other than the one in which the offense was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and for the defence, shall be paid by the State Treasurer, in such manner as may be provided by law: *Provided,* In all cases of lynching when death ensues, the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars to the legal representatives of the person lynched: *Provided, further,* That any county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any court of competent jurisdiction.

Tennessee

Tenn. Code (Harsh, 1932)

Section 450. 416. *Sheriff allowing prisoner to be lynched is guilty of a high misdemeanor in office; fine; forfeiture; incapacitated to hold office.* Any sheriff who, either negligently or willfully, or by want of proper diligence, firmness, and promptness in the use of all the powers with which he is vested by law, allows a prisoner to be taken from the jail of his county, or to be taken from his custody, and put to death by violence, shall be guilty of a high misdemeanor in office, and, upon indictment therefor and conviction thereof, shall be fined at the discretion of the court, and shall also, by the judgment of the court, forfeit his office, and be declared forever incapable of holding any office of trust or profit in this state.

Section 7058 (5096) 5924. *Prosecutor.* No district attorney shall prefer a bill of indictment to the grand jury without a prosecutor marked thereon, unless otherwise expressly provided by law.

Section 7059 (5097) 5925. *When dispensed with.* But a prosecutor is dispensed with, and the district attorney may file bills of indictment, officially, and without a prosecutor marked on the same, in the following cases.

Section 7059 (5097) 5925. (24) *For lynching of prisoners.* Upon an indictment against a sheriff for permitting prisoner in his custody to be put to death by violence.

Section 7377. 6244. *Sheriff to employ guards to protect defendant.* In all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant, or his safekeeping, shall require a guard it shall be the duty of the sheriff to employ a sufficient guard to protect the defendant from violence, and to prevent his escape or rescue; but nothing in this article shall authorize the employment of a guard in cases of insufficient jails, but in such cases the defendant shall be sent to adjoining counties, as required by law.

Section 7378. 6245. *Compensation of guard.* For such service, each guard shall receive one dollar for each day, and one dollar for each night so necessarily employed, to be taxed in the bill of cost and paid as other costs are now paid. Before the same shall be allowed and taxed in the bill of cost, the sheriff shall, in each case make a statement showing the names and number of such guards, the time of service, and the amount due each. The attorney-general of the district shall examine and certify the same as correct; the circuit judge shall also examine the same, and examine in open court such testimony as he may deem necessary as to the necessity of such guard, as to their service, and shall certify that the guard was necessary, and that they have rendered the service, and the same is correctly taxed, all of which shall be spread on the records; and upon a certified copy being presented to the comptroller, he shall issue a warrant for the same.

Section 7379. *Expenses for board, how paid.* Whenever any officer may have to pay necessary expenses for board in guarding a prisoner, the same shall be allowed to him, to be taxed in the bill of costs not to exceed twenty-five cents per meal each for himself, prisoner, and guard.

Section 7380 (5402) 6246. *By sheriff.* The sheriff has authority, when the jail of his county is insufficient for the safe-keeping of a prisoner, to convey him to the nearest sufficient jail in the state.

Section 7381 (5403) 6247. *By magistrate.* In all cases, also, where it is shown to the committing magistrate, judge, or court, that the jail of the county in which the commitment should be made is insufficient for the safe-keeping of the prisoner, the commitment shall be by mittimus or warrant stating the fact, to the nearest sufficient county jail.

Section 7382 (5404) 6248. *Or court.* And in all cases where the jail in which a prisoner is confined becomes insufficient from any cause, any circuit or criminal judge, upon the application of the sheriff and proof of the fact, may order the prisoner, by mittimus or warrant, to be removed to the nearest sufficient jail.

Section 7383 (5405) 6249. *Guard.* The sheriff is authorized to employ as many as two persons, if necessary, in removing a prisoner under the foregoing sections, and they shall be each allowed for such services as is provided for similar services in conveying convicts to the penitentiary.

Texas

Tex. Ann. Cr. Code (Vernon, 1926)
Tex. Ann. Civ. Stat. (Vernon, 1926)

Article 207 (254). *Rape.* Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and, if his court be in session, but the grand jury has been discharged, he shall immediately recall said grand jury to investigate the accusation. Prosecutions for rape shall take precedence in all cases in all courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

Article 5118. *Prisoner sent to another jail.* A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

Article 6871 (7127) 4898. *May employ guards.* Whenever in any county it may become necessary to employ guards for the safekeeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioner's court, or in case of emergency, with the approval of the county judge, employ such number of guards as may be necessary; and his account therefor, duly

itemized and sworn to, shall be allowed by said court and paid out of the county treasury.

Utah

Utah Comp. Laws (1917)

Section 1505 (579). *Temporary guard for jail.* The sheriff, when necessary, may, with the assent in writing of the district judge, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which shall be a state or county charge, as the case may be.

Vermont

Vt. Gen. Laws (1917)

Section 7237. *Transfer of prisoner for safe-keeping.* When a person is under arrest charged with an offense punishable by death or imprisonment in the state prison or house of correction, the governor, if, in his opinion, such person cannot be properly or safely kept in the jail of the county where such prosecution is pending, may by order, in writing, direct the officer having such person in custody to remove him to the state prison, house of correction or to any county jail, pending proceedings upon such charge. If it appears to the governor that such person is insane and in need of treatment therefor, he may, in like manner, and for the same time, order him removed to the Vermont state hospital for the insane.

Section 7251. *Destroyed or insecure, prisoners removed.* When a jail is destroyed by fire or other casualty or becomes insecure, the sheriff may remove the persons confined therein to a jail in an adjoining county.

Section 7264. *Direction of order; town reimbursed for costs, when.* The order of removal shall be directed to the sheriff of the county where the person is confined, and shall be returnable to the governor. When such removal is made and the town from which the original commitment was made, has paid the costs of prosecution and commitment in whole or in part, the state shall reimburse such town for such expense.

Section 7265. *Authority of keeper of jail to which removal is made.* The keeper of the jail to which the prisoner is removed under the provisions of the second preceding section shall have the same authority and be subject to the same duties and liabilities as to the prisoner so removed, as in the case of a prisoner originally committed to such jail under sentence. The house of correction shall be deemed the jail of Rutland County for the purpose of this and the two preceding sections.

Section 7263. *On order of the governor.* The governor may, in his discretion, remove a person confined in any jail or removed to a detention farm to any other jail or detention farm. Such removal shall be made by the written order of the governor addressed to the sheriff of the county wherein the person is confined or where the person to be removed is. The original of such order of removal shall be kept on file in the executive department, and three certified copies thereof, certified to by the secretary of civil and military affairs, shall be furnished said sheriff. Said sheriff shall remove the person named in such order of removal to the jail or detention farm named in such order and shall give one of such copies to the keeper of the jail in which the person is confined or to the superintendent of the detention farm where such person is, and the other copy shall be delivered by the sheriff to the keeper of the jail or the superintendent of the detention farm to which such person is removed. The order shall recite the process upon which the person was committed to the jail and shall state the day of such commitment. A person in jail not under sentence shall not be so removed without his consent. If the person so removed is under sentence, the term of the sentence shall be computed from the day of the original commitment and the term of such sentence shall be stated in the order of removal, and the time spent in removing and in serving in the jail or detention farm to which removed, shall be computed as time served under the sentence.

Virginia

Va. Code Ann. (Michie, 1930)

Section 4427c. *Mobs and lynching defined.* A collection of people, assembled for the purpose and with the intention of com-

mitting an assault and/or battery upon any person and without authority of law, shall be deemed a "mob" for the purpose of this act; and any act of violence by a "mob" upon the body of any person, which shall result in the death of such person, shall constitute a "lynching" within the meaning of this act.

Section 4427d. *Lynching deemed murder.* The "lynching" of any person within this State by a "mob," shall be deemed murder, and any and every person composing a "mob" and any and every accessory thereto, by which any person is lynched, shall be guilty of murder, and upon conviction, shall be punished as provided in chapter one hundred and seventy-eight of the Code of Virginia.

Section 4427e. *Assault and battery by mob constitutes felony.* Any and every person composing a "mob" which shall commit an assault and/or battery upon any person without authority of law, shall be guilty of a felony, and upon conviction, shall be confined in the penitentiary for not less than one year nor more than ten years; provided, however, that if such injury shall result in the death of such person, each and every principal and accessory of such "mob," and accessory thereto, shall be guilty of murder, and upon conviction, shall be punished as provided in paragraph two of this act.

Section 4427f. *Duty of Commonwealth attorney in county where lynching occurred.* It shall be the duty of the attorney, for the Commonwealth, of any county or city in which a "lynching" may occur, to promptly and diligently endeavor to ascertain the identity of the persons who in any way participated therein, or who composed the "mob" which perpetrated the same, and have them apprehended, and to promptly proceed with the prosecution of any and all persons so found; and to the end that such offenders may not escape proper punishment, such attorney for the Commonwealth may be assisted in all such endeavors and prosecutions, by the attorney general, or other prosecutors designated by the governor for the purpose; and the governor shall have full authority to spend such sums as he may deem necessary for the purpose of seeking out the identity, and apprehending the members of such guilty "mob."

Section 4427g. *Civil liability for lynching.* Nothing herein contained shall be construed to relieve any member of any such mob from civil liability to the personal representative of the victim of such lynching.

Section 4427h. *Persons suffering death from mob attempting to lynch another person.* Any person suffering death from a mob attempting to lynch another person shall come within the provisions of this act, and his personal representatives shall be entitled to relief in the same manner and to the same extent as if he were the originally intended victim of such mob.

Section 4954. *When jailer to summon guard for jail; allowances therefor by court.* When ordered by the court to do so, or it is in his own opinion necessary for the safekeeping of a prisoner under charge of, or sentence for, crime, the jailer shall summon a sufficient guard and the circuit court of the county, or the corporation court of the corporation in which the jail is, may allow therefor so much as it deems proper, not exceeding two dollars per day for each man.

West Virginia

W. Va. Code Ann. (Barnes, 1923)

Section 17. *Mobs and lynchings.* (1) Any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a "mob," or "riotous assemblage."

(2) The term "serious injury," for the purpose of this act, shall include any injury to property which shall cause damage to the owner thereof, or any injury to the person which shall temporarily or permanently disable the person injured from earning a livelihood.

(3) The putting to death of any person within this state by a mob or riotous assemblage, shall be murder, and every person participating in such mob or riotous assemblage by which a person

is put to death, shall be guilty of murder, and upon the conviction thereof shall be punished as provided by chapter one hundred and forty-four of Hogg's code of West Virginia.

(4) Any person or persons who shall compose a mob or riotous assemblage, with the intent to inflict damage or injury to the person or property of any individual charged with crime, or, under the pretense of exercising correctional powers over such person or persons by violence, and without lawful authority, shall be subject to a fine of not less than one hundred dollars, nor more than one thousand dollars, and may be imprisoned in the county jail not less than thirty days nor to exceed twelve months for each and every offense. Any person or persons who shall compose a mob or riotous assemblage and who inflict damage or injury to the person or property of any individual charged with crime shall be guilty of a felony and shall be imprisoned in the penitentiary not less than one year nor more than ten years for each and every offense.

(5) Any person or persons, composing a mob or riotous assemblage under the provision of this act, who shall by violence inflict serious injury to the property or to the person of any other person upon the pretense of exercising correctional powers or regulative powers over such person or persons, and without authority of the law, shall be deemed guilty of a felony, and upon the conviction thereof shall be punished by confinement in the penitentiary not exceeding five years; and any person suffering serious injury to his property or to his person by a mob, shall have an action against the county or city in which such serious injury is inflicted for such damages he may sustain, to an amount not to exceed five thousand dollars.

(6) The county in which such person charged with a crime and within which such person has been taken from a state, county or municipal officer and lynched and put to death, shall be subject to a forfeiture of five thousand dollars, which may be recovered by appropriate action therefor, in the name of the personal representative of the person put to death, for the use of his dependent family or state. Such action may be brought in any state court. If such forfeiture is not paid upon recovery of judgment therefor,

the court rendering such judgment, shall have power to enforce the payment thereof, and may compel the levy and collection of a tax therefor, or otherwise compel the payment thereof by mandamus or other appropriate process, and every officer of such county, and every other person who disobeys or fails to comply with any lawful order of the court, shall be liable to punishment according to law as for contempt and to any other penalties provided by law therefor.

(7) In the event any person so put to death, who shall have been taken from any state, county or municipal officer in one county, by a mob or riotous assemblage of five or more persons, and transported out of such county before such killing shall have taken place, and the fact that such killing occurred out of said county from which such person may have been taken, shall not relieve the said county from which he was taken from such state, county or municipal officer from the liability provided by this act.

And if the person, who shall be taken from such officer or officers, be transported from, and put to death and lynched in another county outside of the county wherein he was taken from such officer or officers, no county through which such person may have been transported, or in which such person has been lynched and put to death, shall be liable to damages hereunder, unless it is clearly shown that the officers or citizens in such county or counties participated in, aided, abetted or encouraged such unlawful putting to death.

(8) Every state, county or municipal officer having the duty or power of preservation or conservation of the peace at the time and place of any such putting to death, or the committing of serious injury to the person or to the property as prescribed in this act, who having reasonable cause to believe that the same is to be done, or is attempted to be done, and neglects or omits to prevent the same, and every such officer from whose custody such person may be taken by such mob or riotous assemblage, and put to death by the same, or whose property or person suffers serious injury at the hands of said mob or riotous assemblage, shall be guilty of negligence in the discharge of his official duty, and the county or city which shall have been sued and compelled to pay damages as

herein provided, may recover same from such negligent officer, by appropriate action upon his official bond.

(9) In any prosecution for any of the offenses defined herein, and any action for the forfeiture imposed as herein provided, every person who has participated in the lynching or in the putting to death of, or in the infliction of great bodily violence or serious injury to the person or property of any person, without authority of the law, and every person who entertains or has expressed any opinion in favor of lynching or in the justification or excuse thereof, or whose character, conduct, or opinions have been or are such as, in the judgment of the court, may tend to disqualify him for impartial and unprejudiced trial of the cause, shall be disqualified to serve as a juror, and in any such action or prosecution, any attorney, interested in the case, shall be entitled to make full inquiry thereof, and to produce evidence thereon; and every person who refuses to answer any inquiry touching his qualifications on the ground that he may thereby criminate himself shall be disqualified as aforesaid.

(10) All acts or parts of acts in conflict herewith are hereby repealed.

Wisconsin

Wis. Stat. (1927)

Section 66.07. *Mob damage.* (1) The county shall be liable for injury to person or property by a mob or riot therein, except that within cities the city shall be liable.

(2) Claim therefor must be filed within six months thereafter. Such claims may be allowed in whole or in part, as other claims, and procedure to enforce shall be as for other claims.

(3) The city or county may recover all such claims and costs paid by it, against any and all persons engaged in inflicting the injury.

(4) No person shall recover hereunder when the injury was occasioned or in any manner aided, sanctioned, or permitted by him or caused by his negligence, nor unless he shall have used all reasonable diligence to prevent the same, and shall have immediately notified the mayor or sheriff after being apprised of

any threat of or attempt at such injury. Every mayor or sheriff receiving such notice shall take all legal means to prevent injury, and if he refuse or neglect to do so, the party injured may elect to hold such officer liable by bringing action against him within six months of the injury.

(5) This section shall not apply to property damage to houses of ill fame when the owner has notice that they are used as such.

INDEX

ABBEVILLE, S. C., feudal crime in events of lynching in, 119; mass meeting in, 118.
Accessories, statutory penalties for in lynching, 29.
Accusations, against persons lynched, 100.
Aiken, S. C., lynching in, 17.
Ailey, Ga., lynching in, 47.
Alabama, deterrent effect of punishment for lynching in, 16; mistrials in, 21; ratio of convictions for to number of lynchings in, 13; record of convictions for lynching in, 16; repeal of anti-lynching legislation in, 27.
American Bar Association, quoted, 117.
Angleton, Tex., lynching in, 6.
Anti-lynching legislation. *See* Legislation.
Appeals, as incentive for lynching, 6-7.
Arming prisoners, required of peace officer, 74.
Arrest, as deterrent of crime, 17. *See* Custody, Prosecution.
Athens, Ga., injunction against mob violence in, 120.
Atlanta Independent, quoted, 66.
Attempted lynchings, convictions for, 15; statutory penalties for, 29; as ground for removal of peace officer, 59.
Attorney General, activities of in Sherman and Chickasha, 82; arguments about prosecution by in lynching cases, 82; ruling by of Ga., 88; prosecution by in lynching cases, 80.

BAKER, Ray S., quoted, 9.
Baltimore Herald, quoted, 107.
Barnes v. Chicago, 33.
Barnwell, S. C., lynching prevented in, 69.
Benjamin, R. C. O., quoted, 54.
Black, P. W., quoted, 43, 46.
Blease, Governor, reward by, 83.
Board of Com'r's. v. Church, 34.
Boycott, Mexican, threatened, 117.
Boyd, General, lynching of, 7.
Brearley, H. C., quoted, 11.
Brewer, Justice, as favoring special terms of court, 105.
Brogden, Justice, quoted, 130.
Brown v. State, 94.
Bryan, Tex., intimidation of witnesses in, 22.
Butler, C. C., quoted, 43, 52.

CADORE, Norm, lynching of, 7.
Capehart, H. J., as sponsor of W. Va. law, 26.
Carter, John, lynching of, 67.
Chamber of Commerce, resolution of at Little Rock, Ark., 66.
Chattanooga, Tenn., lynching in, 126.
Chicago, fines on for riots, 51.
Chicago Tribune, 3.
Chickasha, Okla., activities of Attorney General in, 82; federal crime in events of lynching in, 119; indictments for lynching in, 21.
Churches, denominations of in relation to lynchings, 4.
Cities. *See* Counties.
Civil action. *See* Mob Courts.
Civil suits. *See* Mob Courts.
Coatesville, Pa., lynching in, 112.
Columbia Record, quoted, 27.
Constitution. *See* Fourteenth Amendment, Information, Equity, Dyer Bill.
Contempt, cases in which lynchers guilty of, 127 ff.; guilt of for failure to pay lynching fines on county, 52; lynching as of Supreme Court of U. S., 78, 127; suggestion lynchers

be made guilty of by statute in certain cases, 132; witnesses guilty of for refusing to testify in lynching investigation, 127.
Continuance. *See* Grand Jury.
Conviction. *See* Punishment.
Cooper, R. A., pardon by as Governor of S. C., 7.
Coroner's Jury, at Lake Coromont, Miss., 54; inadequate investigation by, 20.
Counties, arguments against fine on for lynching, 53; deterrent effect of fine on for lynching, 50-51; deterrent effect of fine on for riots, 51; difficulty of collecting fine on for lynching, 52; economic aspects of typical lynching, 4; fines on for mob injury, 55; fine on for lynching as reaching lynchers, 54; fine on for riots, 51; history of fine on for crime, 48-49; lynching ratio in proportion to population of, 80; necessity for dereliction of peace officer to fine on, 53; opposition to fine on for lynching, 49; provincialism of as reason for difficulty of getting change of venue, 98; social aspects of typical lynching, 4; statutory liability of for lynching, 48. *See also* Verdict.
Courts, civil actions in federal against molesters, 78, 119; inefficiency of as incentive for lynching, 9; inefficiency of in lynching cases compared to other cases, 14; judicial concept of "mob" in Kansas, 38-42; refusal to change venue, 94 ff.; special term of favored by Governors, 105; special term of as unfair, 107 ff.; special term of requested by mob before lynching, 106; special term of as preventing lynchings, 105. *See* Peace Officers, Punishment.
Crawfordsville, Tex., lynching in, 6.
Crime, federal in events of lynchings, 119; surveys of needed in South, 12; time between lynching and, 122.
Culburtson, Oliver, lynching of, 8.
Custody, as statutory requirement to constitute lynching, 35; danger of requiring for removal of peace officer, 70-71; lynchings classified with reference to in states requiring for removal of peace officer, 70; lynchings in N. C. in which deceased was under, 53; lynching of persons under, 35-36; necessity for to make county liable for lynching, 52-53; necessity for to removal of peace officers, 58.

DARIEN, Ga., militia in, 89.
Davis v. Mahoning County, 32.
Definition. *See* Lynching.
Denver, J. W., quoted, 38.
Detectives, use of in lynching investigations, 83-84.
Dictionaries. *See* Lynching.
Dingus v. Commonwealth, 109.
Disbarment, of lawyer for lynching, 131.
Disqualification. *See* Grand Jury, Petty Jury, Peace Officers.
Downer v. Dunaway, 108.
Durfee, Jim, lynching of, 6.
Dyer Bill, constitutionality of, 118; provisions of, 118; southern opposition to, 118 ff.

ECHOLS, Will, lynching of, 7.
Economic aspects of typical lynching counties, 4.
Equity, constitutional restrictions on as preventing use of injunction in lynching cases, 126. *See* Injunction.
Eubanks, as sponsor of Ohio law, 26.
Evans, Spencer, lynching of, 6.

FEDERAL courts. *See* Courts.
Federal crimes. *See* Crime.
Federal legislation, in general, 5. *See* Legislation.
Fortson, Blanton, 120.
Fourteenth Amendment, in relation to act providing for removal of peace officers, 71.

Francis, W. T., as sponsor of Minn. law, 26.
Frank, Leo, lynching of, 6.

GARDNER, Judge, quoted, 79.
Georgia, Bar Ass'n of quoted, 5; change of venue in, 92 ff.; Committee on Race Relations quoted, 59; ratio of convictions for to number of lynchings, 13.
Germans, lynching during war of pro-., 117.
Godley, Montgomery, lynching of, 27.
Gordonsville, Va., lynching in, 87.
Governors, as favoring special terms of court, 105; inability of to send militia without local request, 88; legislation recommended by, 112, 116; lynchings prevented by, 69; of Ky. quoted, 72; of Ga., denial of blame for lynching by, 88; of Pa., recommendation by, 112; orders to militia commander by, 87; removal of peace officers by, 58; report of on grand jury investigation, 20; rewards by, 83; veto of legislation by, 49. *See also* proper names of Governors.
Graham v. State, 94.
Grand Jury, continuances and postponement by, 20; control by judge over, 79; delay in investigation by, 19; difficulty of getting indictment against peace officer by, 65; disqualifying those favoring lynching for service on, 77; failure of to call material witnesses, 20; indictments by in Monroe Co., Ga., 124; judge's charge to, 22; necessity for indictment by as hampering judicial punishment, 78; record of indictments by for 1930 lynchings, 78; recommendation of removal of sheriff by, 67; report of a governor on investigation by, 20. *See* Chickasha.
Grant, George, lynching of, 89.
Green, Allen, lynching of, 7.
Greensboro News, quoted, 19.
Grimke, F. J., quoted, 47.
Guardian, quoted, 43.
Guards, employment of required of peace officers, 74.
Gunter v. Dale County, 48.

HOGG, J. S., quoted, 112.
Homicide, punishment for in relation to prevalence of lynching, 10; relation between numbers of and punishments for compared to same for lynchings, 14. *See* Rhode Island, South Carolina.
Honey Grove, Tex., lynching in, 37.

ILLINOIS, ratio of convictions for to number of lynchings, 13.
Indictment. *See* Grand Jury.
Information, constitutional barriers to prosecution on, 79; prosecution on, 77.
Injunction, arguments concerning use to prevent lynchings, 124 ff.; granted to prevent mob violence in Ga., 120; possibility of getting in various lynching cases, 122 ff.
Intelligence of mobs, 123-124.
Intimidation. *See* Witnesses.
Investigation, often thwarted, 19. *See* Coroner's Jury, Detectives, Grand Jury.

JAMISON v. People, 99.
Johnson, J. W., quoted, 17.
Judge, charge of to Grand Jury, 22; to trial jury, 34.
Jury, special kinds of for lynching trials, 79-80. *See* Grand Jury, Judge, Petty Jury.

KANSAS, judicial concepts of "mob" in, 38-42; mob violence in, 39 ff.
Kilgo, Bishop, quoted, 53.
Ku Klux Klan, use of anti-lynching legislation by members of, 26.

LACKE, Justice, quoted, 130.
Lake Coromorant, Miss., lynching in, 54.
Law enforcement, as deterrent of lynching, 17.
Laws, types of and effect in preventing lynchings, 16. *See* Legislation.
Lawyer, disbarment of for lynching, 131.
Leavenworth, Kan., lynching in, 74.
Legislation, anti-lynching, federal, 5; history of, 26-27; history of attempts to get federal, 117 ff.; instances of attempted, 115; Negroes as sponsors of, 26; recommended by Governors, 116; repeal of, 27; suggestions sometimes made as to, 112; technical requirements of, 32; types of, 25; use of by Ku Klux Klan, 26; veto of by Governor, 49. *See* Counties, Dyer Bill, Governors, Mob, Peace Officers.
Lima, O., lynching prevented in, 69.
Little Rock, Ark., resolutions of Chamber of Commerce in, 66.
Longino, A. H., quoted, 113-115.
Lore, C. B., quoted, 106.
Lynch, Jay, lynching of, 9.
Lynching, accusations against persons of, 100; appeals as incentive for, 6-7; arrest and prosecution as deterrent of, 17; as a statutory crime, 29; attempted, convictions for, 15; attempted, statutory penalties for, 29; bill to legalize, 116; by Negroes, 45; by prisoners, 45; change of venue as incentive for, 99; conviction of lynchers in relation to numbers of, 13; definition of suggested, 47; denial of blame for by Governor of Ga., 88; denominations of churches in relation to, 4; disbarment of lawyer for, 131; federal crime discovered in events of, 119; fine on S. C. counties for, 50; inefficiency of courts in cases of compared to other cases, 14; inefficiency of courts as incentive for, 9; insufficiency of sentence as incentive for, 7; law enforcement as deterrent of, 17; legal connotation of, 29; meaning of attached to by statisticians, 44; meaning of given by dictionaries, 44; meaning of under statutes defining it, 31-32; mob injury as, 42; Negroes as greatest victims of, 10; number of, 1889-1932, 3; numbers of in states making a statutory crime of, 29; pardon as incentive for, 6; preventions reported and, 86; pro-Germans, 117; punishment for homicide in relation to prevalence of, 10; rape as charge against persons victim of, 111; rate of in proportion to county population, 80; ratio of convictions for to numbers of in several states, 13; relations between numbers of and number of punishments for to same for homicide, 14; rewards in cases of, 83; significance of status making crime of, 30; special kinds of juries in trials for, 79-80; special pay for prosecutor in investigating, 77; statutory penalties for, 29; statutory penalty for accessories in, 29; suggestion to place county of under martial law, 88; testimony of sheriff in at Union, S. C., 21; time between crime and, 122; types of laws against, 16; use of detectives in investigating, 83-84; various manners of, 46; withholding privilege against self-incrimination in investigating, 77. *See* Attorney General, Contempt, Custody, Counties, Courts, Equity, Governor, Grand Jury, Injunction, Legislation, Militia, Mob, Negroes, Peace Officers, Petty Jury, Prisoners, Public Opinion, Trials, Venue. *See also* names of persons lynched and localities thereof.

MARION, Ind., lynchings in, 27.
Marshall, Gene, lynching of, 8.
Martial law, in Sherman, Tex., 88;

suggestion to place lynching county under, 88.
Maryville, Mo., militia in, 89.
Memphis Commercial Appeal, quoted, 66.
Mexico, boycott threatened in for lynching of Mexican, 117.
Militia, failure of sheriff to call, 74; in Darien, Ga., 88-89; in Maryville, Mo., 89; killing by to prevent lynching, 87; lynchings by, 87; necessity for authority of to supersede that of local officers, 90; necessity for local request to sending of, 88; orders to commander of by Governor, 87; part played by in Maryville, Mo., lynching, 89 ff.; threatened lynchings prevented by, 87.
Mincey, lynching of, 47.
Minnesota, ratio between convictions for and number of lynchings in, 13.
Missouri, ratio between convictions for and number of lynchings in, 13.
Mistrial, in Alabama, 21.
Mitchell, lynching of, 47.
Mob injury, as ground for removal of peace officers, 59, 73. *See* Counties, Lynching.
Mob violence, as a statutory crime, 27; cases of in Kansas, 39 ff.; injunction against in Athens, Ga., 120; to Asbury McCluskey, 120. *See* Injunction, Lynching, Mob.
Mobs, civil actions against members of, 78; intelligence of, 123-124; intent of as technical requirement of legislation, 33; members of notoriously known, 78; number of persons necessary to constitute, 37; request by for special term of court before lynching, 106; size of in 1930 lynchings, 123. *See* Mob Injury, Mob Violence.
Moley, Raymond, quoted, 79.
Monroe County, Ga., indictments against lynchers in, 124.
Montgomery Advertiser, quoted, 107.
Municipalities. *See* Counties.

NATIONAL Afro-American Council, 117.
National Association for the Advancement of Colored People, 3.
Negroes, as greatest victims of lynching, 10; as sponsors of anti-lynching legislation, 26; lynching by, 45; ratio of lynched to whites lynched, 100; severity of punishment of compared to same for whites, 10.
New Orleans Item, quoted, 54.

OATH, suggestion of non-lynching for public officers, 112.
Officers. *See* Peace Officers.
Oklahoma, ratio of convictions for to number of lynchings in, 13.
Opinion. *See* Public Opinion.
Ouster. *See* Peace Officers.

PARDON, an incentive for lynching, 6.
Paris, Ky., lynching prevented in, 69.
Pay, special for prosecutor in lynching investigation, 77.
Peace officers, attitude of towards lynching, 69; avoiding removal by resignation, 65; authority of superseded by militia, 90; deterrent effect of removal of, 59 ff.; difficulty of getting conviction of in courts, 72; disqualification of for failure to prevent lynching, 59; instances of removal of, 60; lynching prevented by, 68; lynchings prevented by families of, 69; necessity for legislation providing removal of in lynching cases, 67; optional reinstatement of after removal as preferable to mandatory, 74; reinstatement of after removal, 58, 73; statutory removal of for failure to prevent lynching, 58; theory of legislation providing removal of, 68; removal of threatened prisoner required of, 74. *See* Arming Prisoner, Attempted Lynching, Custody, Fourteenth Amendment, Grand

Jury, Governor, Guards, Mob, Petty Jury, Public Opinion, Venue.
Petty Jury, difficulty of getting action against peace officer by, 65; disqualifying for those favoring lynching, 77; inadequacy of for lynching trials, 121.
Pittsburg, Kan., lynching in, 27.
Postponements. *See* Grand Jury.
Presley, S. C., quoted, 46.
Prevented lynchings. *See* Lynching.
Prisoners, compulsory transfer of to prevent lynching, 103 ff.; laws regulating transfer of, 102; lynching by, 45; transfer of as preventing lynchings, 102; transfer of without statutory authority, 102.
Privilege against self-incrimination, withholding in lynching investigation, 77.
Prosecution, as deterrent of crime, 17. *See* Information.
Prosecutor. *See* Pay.
Public officials, special non-lynching oath for, 112.
Public opinion, as deterrent of lynching, 18; expression of in judicial process, 23; in relation to removal of peace officers, 66; in relation to measures repressive of lynching, 66.
Punishment, detailed instances of for lynching, 18-23; deterrent effect of, 16; in relation to number of lynchings, 13. *See* Alabama.

QUITMAN, Miss., lynching in, 7.

RAPE, as charge against lynched person, 111.
Raper, Arthur, quoted, 11.
Reinstatement. *See* Peace Officers.
Removal. *See* Peace Officers, Prisoners.
Resignation. *See* Peace Officers.
Rewards, by Governors, 83; by *San Antonio Express*, 83; for apprehension of lynchers, 83.
Rhode Island, homicide in and punishment therefor, 10.
Richards, J. G., comment on sheriff's action, 22.
Riots, Chicago, 51; deterrent effect of fine for, 51; fine on counties for, 51.
Rome, Ga., lynching in, 107.

SAN Antonio Express, reward by, 83.
Scottsboro case, 5.
Sentence, insufficiency of as incentive for lynching, 7. *See* Punishment.
Shelbyville, Tenn., lynching in, 127.
Sheriff, comment on action of by J. G. Richards, 22; removal of recommended by Grand Jury, 67; testimony of at Union, S. C., 21. *See* Militia, Police Officers.
Sherman, Tex., activities of Attorney General in, 82; martial law in, 88.
Social aspects of typical lynching counties, 4.
South, need for Crime Surveys in, 12; opposition to Dyer Bill in, 118 ff.
South Carolina, arrest and prosecution for homicide in as deterrent of crime, 17; fines on counties of for lynchings, 50; homicide in and punishment therefor, 10.
Southern Commission, quoted, 3, 47, 54, 69, 71, 81, 98, 103, 107, 123.
State v. Cazalas, 63.
State v. Jinwright, 60.
State v. Newsome, 128.
Statesboro, Ga., lynching in, 9.
Statistics. *See* Lynching.
Stephenson, Judge, 105, 111.
Stevens, Andrew, as sponsor of Pa. law, 26.
Summary trial, unfairness of, 8.
Supreme Court. *See* Contempt, Courts.

TERRY v. State, 99.
Testimony, of sheriff in lynching at Union, S. C., 21. *See* Witnesses.

Texas, ratio of convictions for to number of lynchings, 13; repeal of anti-lynching legislation in, 27.
Thomas County, Ga., lynching in, 47.
Thorndale, Tex., lynching in, 37.
Transfer. *See* Prisoners.
Trial, in Walhalla, S. C., 18 ff.; private to prevent lynching, 111; unfairness of summary, 8. *See* Courts.
Tuskegee Institute, 3, 13.
Tyler, Governor, quoted, 80.

UNION, S. C., sheriff's testimony about lynching in, 21.

VERDICT, directed in suit against county, 52.
Veto. *See* Governors.
Venue, automatic change of proposed for certain cases, 100; change of as incentive for lynching, 99; change of in Georgia, 92 ff.; change of in removal proceedings, 59, 77; change of in trial for lynching, 77; change of for trial of person threatened with lynching, 92; difficulty of getting change of, 93, 98; instances of trial court's refusal to grant change of, 94 ff.
Virginia, ratio of convictions for to number of lynchings, 13.

WACO, Tex., lynching in, 8, 110.
Walhalla, S. C., lynching in, 7; lynching trial in, 18 ff.
Wall, J. B., disbarred for lynching, 130.
Walton County, Ga., lynching in, 7.
Washington, B. T., 59.
White, Walter, 3.
Wickersham Commission, 3.
Winnsboro, S. C., lynching prevented in, 69.
Witnesses, changed testimony by, 18, 21; conflicting testimony of, 22; intimidation of at Bryan, Tex., 22; contempt by for refusal to testify, 127; reluctance to testify, 21. *See* Grand Jury, Privilege.
Woodsome, James, lynching of, 7.
Woodward, John, quoted, 105.

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